

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12312 OF 2016

Amir Shaukat Sanadi ... Petitioner
Vs.
Rozan Fish Farm and Ors. ... Respondents

Mr. Chetan G. Patil for the petitioner.
Mr. Abhijit M. Adagule for the respondent No.1.

CORAM : M. S. KARNIK, J.
DATE : 23rd SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The order under challenge is dated 17.6.2016 passed by the Trial Court below Exhibit 36. The petitioner is the original defendant No.3. The plaintiff filed a suit for cancellation of the sale deed and for possession. It is the contention that the plaintiff had sold 3.03 Hectare land out of Gat No.1014 to defendant Nos.1 to 4. The plaintiff contended that he did not receive a sum of Rs.6,75,000/- out of consideration amount. The plaintiff also claimed compensation for mental harassment.

3. The defendant No.3 filed a counter claim claiming arrears of electricity bill, amount of stamp duty and half of the expenses incurred for sale deed. The declaration was also sought that the boundary dispute with Ranjit Parekh be resolved by plaintiff. It is not disputed that the possession of the suit property is with the defendant Nos.1 to 3. It is the contention of defendant No.3 that if Ranjit Parekh is added as party defendant boundary dispute will be resolved. He is therefore a necessary/proper party. Exhibit 35 is filed for impleading Ranjit Parekh as a defendant on application made by defendant Nos.1, 2 and 4 under Order I Rule 10(2) and Section 151 of the Code of Civil Procedure. The application Exhibit 36 is made by defendant No.3.

4. The Trial Court rejected these applications observing that the proposed defendant i.e. Ranjit Parekh is not a necessary party to the present suit.

5. It is the contention of learned counsel for the petitioner that Ranjit Parekh is a necessary party. According to learned counsel Ranjit Parekh is trying to encroach on the suit property. He would invite my attention to the averments made in

the sale deed wherein it has been stated that in case of any dispute in respect of the suit property, the same will be resolved by the vendor that is the plaintiff. Learned counsel for the petitioner would thus contend that as Ranjit Parekh is encroaching upon the suit property in possession of the defendants and as there is a boundary dispute which can be resolved only if Ranjit Parekh is made party defendant to the suit, it is necessary to implead him. It is the submission of learned counsel for the petitioner that as on the date when the sale deed was executed the plaintiff had filed obstructionist application in Special Darkhast No.7 of 2004. According to him plaintiff was aware of the encroachment made by Ranjit Parekh. This fact was suppressed when the sale deed was executed.

6. Learned counsel for the respondent No.1 supported the impugned order. Heard learned counsel. It is the case of the petitioner-original defendant that Ranjit Parekh is a necessary party as there is boundary dispute. In my opinion, considering the frame of the suit and the counter claim, the said Shri Ranjit Parekh is not necessary to be impleaded in the said suit. The plaintiff has filed a suit for cancellation of sale deed and in the

alternative for receipt of an amount of Rs.6,75,000/- which according to the plaintiff is due and payable by the defendants. The plaintiff also claimed damages for mental harassment. The counter claim by the defendant No.3 is for arrears of electricity bill, amount of stamp duty and half of the expenses incurred for sale deed. Further a declaration is sought that the boundary dispute should be resolved by the plaintiff.

7. The averments made in the sale deed also will go to show that any dispute in respect of the suit property concerned has to be resolved by the plaintiff. To that effect the suit has been filed. Merely because the obstructionist application has been made by the plaintiff in Special Darkhast No.7 of 2014 and which was not disclosed at the time of execution of sale deed will not give any cause to the defendants to seek impleadment of Ranjit Parekh.

8. In this view of the matter, I do not find any reason to interfere with the order passed by the Trial Court.

9. Needless to mention that if the defendants have any grievance as regards encroachment that is purportedly made by

Ranjit Parekh, it is always open for them to institute independent appropriate proceedings.

10. With these observations, the present petition is dismissed with no order as to costs.

(M. S. KARNIK, J.)