

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5628/2016

M.M.Multipurpose Creations, a partnership firm
through Ashok Lalchand Gurubaxani and others

Vs.

Smt. Zakiya Begam Mohd. Rafiq Shaikh and others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.V.Purohit, Advocate for petitioners.
Shri R.O.Chhabra, Advocate for respondent no. 10.
Shri Amit Khare, Advocate for respondent nos. 11 and 12.

CORAM : A.S.CHANDURKAR, J.

DATED : July 23, 2019.

The challenge raised in the present writ petition is to the order dated 08.07.2016 passed by the trial Court below Exhibit 55 allowing the application that was filed by the respondent nos. 11 and 12 for being added as defendants in the suit.

The petitioners are the original plaintiffs. They claim title over land admeasuring 2 H 51 R from Khasra No.33. It is their case that on 31.01.2012 they had purchased the aforesaid land from the defendant nos. 1 to 9. In the plaint, it is pleaded that Khasra No.33 was admeasuring 4 H 52 R, out of which the plaintiffs purchased 2 H 51 R land. 1 H 62 R land was owned by one Lawrence Education Society and remaining land admeasuring 0.39 R vested with the Nagpur Improvement Trust. According to the plaintiffs, the defendant nos. 1 to 9 with a view to grab this land admeasuring 0.39 R manipulated the revenue record and were claiming title in themselves. On 03.08.2015 they filed a suit for declaration that the defendant nos. 1 to 9 had no right, title or interest over the suit property and that the revenue record in respect of

0.39 R land were false and bogus which did not give any title to the defendant nos. 1 to 9.

In that suit an application under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') filed by the respondent nos. 11 and 12 praying that they be added as defendants in the said suit. In the application in question, it was stated that on 08.09.2014 they had entered into an agreement with the defendant nos. 1 to 9 to purchase 0.39 R land. They claimed to be in possession thereof. This application was opposed by the plaintiffs by filing reply and the trial Court by the impugned order was pleased to observe that since the said applicants were claiming interest on the basis of an agreement with regard to 0.39 R land, they were liable to be added as defendants. Being aggrieved, that order has been challenged in the present writ petition.

Shri S.V.Purohit, learned counsel for the petitioners submitted that on the basis of an unregistered agreement, the respondent nos. 11 and 12 sought their addition. The suit as filed was for declaration that the defendant nos. 1 to 9 had no right, title or interest in the suit property. The plaintiffs had no grievance against the proposed defendants and said defendants were free to file appropriate proceedings against the defendant nos. 1 to 9 to prove their title. Since the plaintiffs were the owners of the land admeasuring 2 H 51 R and their title was confirmed by the defendant nos. 1 to 9, there was no reason to add the defendant nos. 11 and 12 against the wishes of the plaintiffs. They were not necessary parties to the suit. He referred to the decision in ***Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and others, (2008) 10 SCC 708*** in that regard.

Shri Amit Khare, learned counsel for the respondent nos. 11 and 12 supported the impugned order. He submitted that the agreement in question was entered into much prior to filing of the suit. Under that agreement the respondent nos. 11 and 12 were concerned with 0.39 R

land which according to the plaintiffs, the defendant nos. 1 to 9 had no right to alienate the same. By the said agreement, it was submitted that the entire consideration was paid and defendant nos. 11 and 12 were put in possession. The discretion exercised by the trial Court therefore did not deserve to be interfered with. It was thus submitted that the impugned order did not warrant any interference.

Shri R.O.Chhabra, learned counsel appeared for the respondent no.10.

On hearing the learned counsel for the parties and on perusing the pleadings on record, it is found that the trial Court by taking a prima-facie view of the matter had found that the addition of the defendant nos. 11 and 12 was necessary. The agreement on which the defendant nos. 11 and 12 seek to rely upon is dated 08.09.2014, while the suit in question was filed on 03.08.2015. When the averments in paragraphs 8 to 14 of the plaint are perused, it becomes clear that it is the specific case of the plaintiffs that the defendant nos.1 to 9 have no right to deal with land admeasuring 0.39 R. It is this very land which the added defendants claim to have a right. In that view of the matter, I do not find that the trial Court committed any error while passing the impugned order.

By clarifying that the observations made in this order are only for the purpose of deciding the challenge as raised to the order passed below Exhibit 55 and by directing the Civil Court to decide the proceedings expeditiously on its own merits, the writ petition stands dismissed with no orders as to costs.

JUDGE