

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 3057 OF 2007

SYED MAULASAB ISMILESAB
VERSUS
SYED HAIDARSAB MAHEBOOBSAB

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Advocate for Petitioner : Mr. V. G. Sakolkar

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CORAM : V. K. JADHAV, J.
DATED : 14th FEBRUARY, 2020

PER COURT:-

1. Heard learned counsel for the petitioner / original defendant. None appears for the respondent / original plaintiff though duly served with rule notice.

2. The respondent / original plaintiff has instituted the suit bearing RCS No. 68/1998 for declaration and perpetual injunction in respect of the Land Survey No. 82/2 ad-measuring 113 R. and the Land Survey No. 82/3 ad-measuring 96 R., both are situated at village Kavthal, Taluka Udgir. The Trial Court by judgment and decree dated 07.10.2003 in RCS No. 68/1998 dismissed the suit. Being aggrieved by the same, respondent / plaintiff has preferred an appeal bearing RCA No. 03/2004. Pending appeal, the

respondent / plaintiff has filed application under Order I Rule 10 of CPC for impleading (1) Vasant @ Baburao S/o. Vishwanath Bargalle and (2) Vishwanath S/o. Ganpati Bargalle to be impleaded as respondent Nos. 2 and 3 to the appeal and also as defendant Nos. 2 and 3 in the plaint in RCS No. 68/1998. The Adhoc Additional District Judge, Udgir, by the impugned order below Exhibit 20 in RCA No. 03/2004 allowed the said application with costs of Rs. 200/-. Hence this Writ Petition.

3. The learned counsel for the petitioner / defendant submits that as detailed in paragraph No. 2 of the impugned order, the said Vishwanath Ganpati Bargalle, proposed defendant, purchased the Land Survey No. 82/4 on 07.05.1991 from the petitioner / defendant and the Land Survey No. 82/1 ad-measuring 48 R. on 04.06.1994. One Shivaji Hude has purchased Land Survey No. 82/1 ad-measuring 0.48 R. on 29.10.2001 from the petitioner / defendant. One Ameersab Sayed under guardianship of his father purchased the Land Survey No. 82/1 ad-measuring 0.48 R. on 22.02.2002 from Vishwanath Ganpati Bargalle. Learned counsel submits that respondent / plaintiff has knowingly suppressed all these material facts and without implementing them in the suit

filed application Exhibit 20 at belated stage during pendency of the appeal. However, the First Appellate Court has not considered the same and allowed the application erroneously.

4. On perusal of the judgment and decree passed by the Trial Court in RCS No. 68/1998, it appears that the respondent / plaintiff has instituted the suit for declaration and perpetual injunction in respect of the Land Survey No. 82/2 and Land Survey No. 82/3. The said transaction as detailed in paragraph No. 2 of the impugned order pertains to the Land Survey No. 82/4 and 82/1 which is not the subject matter of the suit. This being specifically stated in paragraph No. 3 of the application Exhibit 20 that during pendency of the suit in the Trial Court the petitioner / defendant has executed registered sale deed in respect of the part of the suit land in favour of one Vasant @ Baburao S/o. Vishwanath Bargalle under registered sale deed bearing Daybook No. 562 dated 28.02.2002. The respondent / plaintiff has also annexed a certified copy of the registered sale deed along with the application. It is further pointed out to the Court that the petitioner / defendant has also sold his land including the part of the suit land to one Vishwanath Ganpati Bargalle and in consequence thereof, the name

of Vishwanath Ganpati Bargalle has appeared in 7/12 record of Survey No. 82/4. In the backdrop of these facts, the learned Judge of the First Appellate Court has rightly concluded that those purchasers as detailed in application Exhibit 20 are the necessary parties.

5. I find no fault in the order passed by the First Appellate Court that the addition of the said parties would not cause any prejudice to the defence of the petitioner / defendant. It is needless to say that such addition of the parties may be allowed at any stage of the proceedings and even during pendency of the Appeal. It appears that while granting Rule on 10.04.2008, this Court has granted interim relief in terms of prayer clause 'C' and as such the RCA No. 03/2004 is still pending before the First Appellate Court. In view of the same, appropriate directions can also be given to the First Appellate Court to dispose of the appeal expeditiously in a time bound manner. Hence the following order :

ORDER

I. The Writ Petition is hereby dismissed.

II. The First Appellate Court is hereby directed to dispose of pending RCA No. 03/2004 as expeditiously as possible, preferably within six months from the date of this order.

III. The Writ Petition is accordingly disposed of. Rule discharged.

(V. K. JADHAV, J.)

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