

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7180 OF 2020

1. Muktabai w/o Shivajirao More,
Age – 45 years, Occu. Agri.,
2. Shivajirao s/o Rangnathrao More,
Age – 50 years, Occu. Agril.,

Both R/o Veer Savarkar Nagar,
Nanded, Tq. & Dist. Nanded.

... PETITIONERS
(Ori. Defendants)

VERSUS

Sau. Ujjwala w/o Sunil Suryawanshi,
Age – 50 years, Occu. Household,
R/o Hanuman Nagar, Nanded,
Tq. & Dist. Nanded.

... RESPONDENT
(Ori. Plaintiff)

...

Advocate for Petitioners : Mr. Nitin S. Kadam

...

CORAM : MANGESH S. PATIL, J.

DATE : 26.10.2020

PER COURT :

The petitioners who are the original defendants are invoking the powers of this Court under Article 227 of the Constitution of India for impugning the order passed by the learned 8th Joint Civil Judge, Junior Division, Nanded on the Application (Exhibit-42) filed by the respondent plaintiff thereby allowing her request for impleading a party as a co-defendant by invoking the powers under Order 1 Rule 10 of the Code of

Civil Procedure.

2. The learned advocate for the petitioners vehemently submits that the respondent has filed the suit for injunction simplicitor. The petitioners have objected her right, title as well as possession over the property in dispute. Since it is a suit for injunction simplicitor it is purely on dispute between the petitioners and the respondent. The person sought to be added is not a necessary party. Allowing his induction in the array of the defendants is likely to vex the issue and protract the litigation. The suit is awaiting decision for last almost three years and the learned Judge ought not to have allowed the Application.

3. The learned advocate took me through the papers and endeavored to point out as to how the person sought to be added has incorrectly described the suit property which he has sold to the respondent plaintiff. He would therefore submit that the person who has sold the properties to the respondent plaintiff has created the dispute by describing the properties under sale incorrectly. The learned Judge therefore should have rejected the Application.

4. I have carefully gone through the papers and the impugned order. The respondent claims to have purchased the property in dispute from the person who has been allowed to be impleaded as defendant No.3 by the impugned order. The petitioners are disputing her right, title and possession over the property purchased by her. They are trying to demonstrate as to how the description of the property is incorrect in the Sale

Deed executed by the defendant No.3 to be added in favour of the respondent plaintiff. If such is the state of affair, more so when the respondent is a *dominus litis* and seeks to implead her predecessor who has executed sale deed in her favour, perhaps to enable her to substantiate her claim to the right, title and possession, her vendor is certainly a proper party if not a necessary party.

5. Additionally, the learned advocate for the petitioners could not demonstrate as to how the petitioners are likely to be put to any prejudice if the vendor of the respondent is allowed to be added as a co-defendant. The learned advocate only submits that since the learned Judge was pressing hard for conducting hearing that the Application was filed to protract the hearing. It is to be borne in mind that the petitioners are the defendants and more than them it would be the respondent plaintiff who would be keen to get the suit decided at the earliest.

6. The learned advocate for the petitioners then points out that the respondent is trying to bring on record certain documents which are in possession of her predecessor which she could have possibly done by calling him as a witness. Though the submission *ex facie* looks attractive, it is for a party to decide as to in what manner and in what form to approach the hearing and prove its case. Instead of calling her predecessor as a witness if she has decided to array him as a defendant No. 3, no fault can be found.

7. Taking into account all the aforementioned facts and circumstances, in my considered view the approach of the learned Civil

Judge is reasonable. There is no arbitrariness or capriciousness so as to enable this Court to intervene under the limited jurisdiction exercisable under Article 227 of the Constitution of India. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)

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