

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2518 OF 2020

Pundlik Shyamrao Waghode

vs.

Shri Mahadeo Sansthan Sangvi and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. R. Khapre, counsel for petitioner.

Mr. H. R. Gadhia, counsel for respondent No.1.

CORAM : MANISH PITALE J.

DATED : 09/12/2020

Heard learned counsel for the rival parties.

2. The petitioner before this Court is a party who was added as defendant No.3 by virtue of impugned order dated 18/08/2020 passed by the Civil Judge, Junior Division, Telhara (Trial Court) in Regular Civil Suit No.12/2020. The petitioner is aggrieved by his being added as defendant No.3 in the suit and he also objects to impugned order dated 18/08/2020 passed by the Trial Court on an application for amendment moved on behalf of the respondent Nos.1 and 2 (original plaintiffs). According to the learned counsel for the petitioner, both these orders are unsustainable.

3. The respondent Nos.1 and 2 filed a suit for permanent injunction against respondent Nos.3 and 4. The respondent Nos.1 and 2 claimed that the respondent

Nos.3 and 4 were disturbing the peaceful possession of respondent Nos.1 and 2 (original plaintiffs) in the suit property. It was claimed that the respondent No.1 was a registered Trust, in ownership and possession of the suit field and that the respondent No.2 had been given yearly possession of the said suit field for cultivation on *Thoka* basis. Suit summons were issued in the suit and application for temporary injunction was also filed before the Trial Court. At this stage, the respondent Nos.1 and 2 filed application before the Trial Court seeking to amend the plaint and also to add petitioner herein as defendant No.3. It was pleaded in the applications on behalf of the respondent Nos.1 and 2 that not only the respondent Nos.3 and 4 were seeking to disturb the peaceful possession of the original plaintiffs in the suit field, but the petitioner herein, who is the father of respondent Nos.3 and 4, was also accompanying them while making such attempts to disturb the peaceful possession of the original plaintiffs. It was contended that the petitioner was seeking to take advantage of certain revenue entries, while making the aforesaid attempt. It was also brought on record that such revenue entry was the subject matter of challenge raised by respondent Nos.1 and 2 before the Competent Authority, which is pending.

4. By the impugned orders, both dated 18/08/2020, the Trial Court allowed the said applications Exh.15 and Exh.16, thereby permitting

amendment of the original plaint and addition of the petitioner as defendant No.3 in the said suit.

5. The petitioner approached this Court challenging the said orders by filing the present writ petition, wherein the respondent Nos. 1 and 2 appeared on caveat. Since copy of the writ petition was served on the learned counsel representing the caveator, this matter was taken up for consideration and disposal. There is no dispute about the fact that respondent Nos.3 and 4 can be said to be only formal respondents in the facts and circumstances of the present case. Accordingly, this Court took up the writ petition for final disposal.

6. Mr. D. R. Khapre, learned counsel appearing for the petitioner vehemently submitted that the applications which were allowed by the impugned orders, were moved by the respondent Nos.1 and 2 in a mischievous manner and that the respondent Nos.1 and 2 deliberately initially filed the suit by adding only respondent Nos.3 and 4, as parties and thereafter by amendment added the petitioner as a party. According to the learned counsel for the petitioner, the aforesaid tactic was adopted by respondent Nos.1 and 2 in order to escape clutches of the provisions of the Maharashtra Public Trusts Act, 1950, particularly Sections 50, 51 and 80 thereof. It was submitted that the petitioner was a Manager of the respondent No.1 Trust, in possession and taking care of the suit field and that as per Section 2(18) of the aforesaid Act, the Manager was a trustee. It was

further submitted that operation of Sections 50, 51 and 80 of the Act would show that such a suit as filed by respondent Nos.1 and 2 would not be maintainable before Trial Court, in the absence of an express permission from the office of the Charity Commissioner. It was submitted that this aspect was completely ignored by the Trial Court while passing the impugned orders and that therefore, the impugned orders deserved to be set aside. It was further submitted that the petitioner was seriously disputing the claim of the respondent No.1 being represented by the person shown as a trustee in the plaint and that therefore, the frame of the suit, the prayer made therein and the aforesaid tactics adopted by the respondent Nos.1 and 2, ought to have been appreciated in the correct perspective by the Trial Court before passing the impugned orders. It was submitted that therefore, the impugned orders deserved to be set aside.

7. Reliance was placed on the judgment of this Court in the case of **Dinanath Ajabrao Ingole and another vs. Shetkari Shikshan Prasarak Mandal, Wardha and others AIR 1983 Bombay 404** and also a judgment of Hon'ble Supreme Court in the case of **Church of North India vs. Lavajibhai Ratanjibhai and others, (2005) 10 SCC 760**.

8. Per contra Mr. Gadhia, learned counsel appearing for respondent Nos.1 and 2 submitted that in the present case, the impugned orders are concerned

with exercise of powers by the Trial Court under Order 6 Rule 17 of the Civil Procedure Code (CPC) on the application for amendment and under Order 1 Rule 10 of the CPC for addition of the petitioner as defendant No.3 in the suit. It was submitted that the Court below had correctly exercised power in terms of the aforesaid provisions and that the enquiry in the present case was limited to the claim of respondent Nos.1 and 2 regarding the amendment and the addition of the petitioner as defendant No.3 in the suit in terms of Order 1 Rule 10 of the CPC. The learned counsel for the respondent Nos.1 and 2 also made submissions in the context of Sections 50, 51 and 80 of the aforesaid Act, by inviting attention of this Court to judgments of this Court passed in the case of **Yamunabai Dhankude vs. Raosaheb Mohanlal Chimanlal Maniyar Trust, 2012 (2) Mh. L. J. 55** and **Vijay Raghurama Shetty vs. Baun Foundation Trust and others, 2011 (16) Mh.L.J. 711.**

9. Heard learned counsel for the rival parties and perused the material on record. Although exhaustive submissions were sought to be made by the learned counsel in the context of Sections 50,51 and 80 read with Section 2(18) of the aforesaid Act, regarding maintainability of the suit filed by respondent Nos.1 and 2 before the Trial Court, this Court is of the opinion that the said arguments are wholly misplaced in the context in which the present writ petition has arisen. The impugned orders passed by the Trial Court in the present case have allowed two applications filed by respondent

Nos.1 and 2. Exh.15 was an application under Order 6 Rule 17 filed by the respondent Nos.1 and 2 for amendment of the plaint and Exh. 16 was an application seeking to add the petitioner as defendant No.3 in the suit. These applications were opposed on behalf of the defendants and the petitioner.

10. A perusal of the applications would show that according to respondent Nos.1 and 2, the petitioner was also seeking to disturb the peaceful possession of the said respondents in the suit field along with original defendants i.e. respondent Nos.3 and 4. There is no dispute about the fact that the petitioner is the father of respondent Nos.3 and 4. By way of amendment, the respondent Nos.1 and 2 sought to place on record the fact that an attempt made by the petitioner allegedly to disturb the peaceful possession of the respondent Nos.1 and 2 in the suit property was based on an entry in record of rights called 7/12 extract. It was claimed that pleading pertaining to such reference to the record of rights and the advantage sought to be taken by the petitioner on the basis of alleged wrong entry was required to be brought on record. The amendment sought to emphasize that the action was being undertaken by the petitioner along with respondent Nos. 3 and 4 in order to grab the property and to disturb the peaceful possession of the respondent Nos.1 and 2 in the suit property.

11. The question that arises for consideration is, as to whether the Trial Court was justified in allowing the aforesaid applications. In so far as the application for amendment (Exh.15) is concerned, a perusal of paragraph 10-a, which was allowed to be added by way of amendment, would show that it pertains to facts sought to be brought on record by respondent Nos.1 and 2 pertaining to the manner in which the petitioner was allegedly seeking to take advantage of wrong revenue entries and the manner in which he had also joined the original defendants / respondent Nos.3 and 4 in seeking to disturb the peaceful possession of respondent Nos.1 and 2. This Court does not find any error in the impugned order passed by the Trial Court allowing the said application, because facts brought on record are clearly germane to the controversy concerning the aforesaid suit.

12. A perusal of the application filed under Order 1 Rule 10 of the CPC (Exh.16), whereby respondent Nos.1 and 2 sought to add petitioner as defendant No.3, would show that specific allegations are made and since the main prayer in the suit is to injunct the defendants from disturbing the peaceful possession of the respondent Nos.1 and 2 in the suit property, if the decree is to have its logical effect, the petitioner needs to be added as party. Considering the nature of relief sought in the suit and the specific allegations made in the applications for amendment and to add party to the suit, they appear to be germane to the controversy in the suit.

There appears to be no error on the part of the Trial Court in allowing the applications. The presence of the petitioner, in the context of the nature of the suit and the relief sought, is absolutely necessary and it is correctly held by the Trial Court that the aforesaid application (Exh.16) also deserved to be granted.

13. This Court is of the opinion that the scope of the aforesaid applications is limited. Consequently, this Court is also required to consider only the limited controversy that would arise while considering the applications in the nature of the applications filed at Exh.15 and Exh.16 . This Court does not find any error on the part of the Trial Court in passing the impugned order by allowing the said applications.

14. The contentions raised by the petitioner with regard to the provisions of the aforesaid Act and the question of maintainability of the suit and the alleged tactics of respondent Nos.1 and 2 in the present case, are clearly beyond the scope of the applications before the Court below at Exh.15 and Exh.16 and the orders passed therein, which are impugned in the present writ petition. Therefore, this Court refrains from making any comment on the same.

15. In view of the above, the writ petition is dismissed.

JUDGE