

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

WRIT PETITION NO. 7941 OF 2018

Shri Abhijit s/o Pandurang Alsi
...Versus...
Vijay s/o Shridhar Alsi and another

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. Sohoni, Counsel for petitioner
Shri P.S. Chawhan, Counsel for respondent No.1
Shri A.A. Naik, Counsel for respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 04.03.2020

1. Heard Mr. Sohoni, learned Counsel for the petitioner, Mr. Chawhan, learned Counsel for respondent No.1 and Mr. Naik, learned Counsel for respondent No.2.

2. The present petition challenges the order dated 22.03.2018 passed by the Trial Court, on an application under Order I, Rule 10 r/w Order VI, Rule 17 of the Code of Civil Procedure for adding the present petitioner as a party defendant to Special Civil Suit No.102/16, which is a suit for eviction, filed by the present respondent No.1 against the respondent No.2 on the ground, that the lease executed between respondent No.1 and respondent No.2, dated 11.09.2007, has expired on 30.11.2016, by efflux of time, which application came to be rejected by the Trial Court.

3. It is the contention of the learned Counsel for the petitioner, that a suit for partition and separate possession, has

been instituted by the present petitioner along with other persons against the respondent No.1 and others, bearing Special Civil Suit No.139/2006, in which the property bearing Nazul plot No.2, Sheet No.55, at Alsi plot at Akola is also the subject matter. It is further contended that on 30.11.2016, an agreement of lease had been executed between the petitioner and M/s Vazeefbdar and sons, a partnership firm, which is a dealer of H.P.C.L. in respect of the Nazul plot No.2 and therefore, for this reason also the petitioner was a proper and necessary party to the suit of eviction.

4. It is trite position of law, that in a suit for eviction, the Court cannot go into the question of title. The suit for eviction is based clearly upon the relationship of landlord and tenant, which in the instant case flows from the registered lease-deed dated 11.09.2007, which is between the respondent No.1 and H.P.C.L. The petitioner admittedly is not a party to the registered lease-deed dated 11.09.2007. The question therefore to be decided in the suit for eviction, is restricted to the expiry of the term of the lease dated 11.09.2007, by efflux of time and the consequent entitlement of the respondent no.1/plaintiff therein for possession of the suit property and nothing else. Since admittedly the petitioner is not a party to the lease-deed dated 11.09.2007, he is neither a proper nor necessary party to the suit for eviction, as the scope of a suit for eviction cannot be enlarged into a suit for partition by permitting the addition of the petitioner as a party defendant to the suit for eviction.

5. Admittedly, the petitioner is already a party/plaintiff No.3 in the suit for partition instituted bearing Special Civil Suit No.139/2006, in which the Nazul plot No.2, is admittedly a subject matter and the result in Special Civil Suit No.139/2006, would obviously govern the ownership and entitlement to Nazul plot No.2, as and when a decree is passed therein, and the Nazul plot No.2 is allotted to the share of a particular party. However, for that reason alone, the petitioner, cannot be permitted to be added as a party defendant in the suit for eviction.

6. The agreement of lease, dated 30.11.2016, upon which reliance is sought to be placed by the petitioner, for raising a claim regarding entitlement to be added as a party to the suit for eviction, is clearly a document, which has been brought on record, for the purpose of the said application, as the document is admittedly not between H.P.C.L. and the petitioner, but is between the petitioner and the dealer appointed by the H.P.C.L., and thus is of no assistance to the argument being advanced by the learned Counsel for the petitioner.

7. That being the position, the petitioner, not being a proper or necessary party in the suit for eviction, the application has rightly been rejected by the learned Trial Court. The writ petition therefore, is without any merits, and is accordingly dismissed without any cost.

JUDGE