

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

Writ Petition No. 6845 of 2019
Pawan Mehare Vs. Dr. Shirish Dehankar and Another

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

Court's or Judge's orders

Mr. A.S. Thotange, Advocate for the petitioner
Mr. N.A. Dharmadhikar, Advocate for the respondent No.1

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 21, 2020

By this writ petition, the petitioner has challenged order dated 09/08/2019, passed by the Court of Joint Civil Judge (Junior Division), Akola, whereby an application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure (CPC), for being added as defendant in the suit, has been rejected.

2. The respondent No.1 (original plaintiff) has filed a suit for possession and permanent injunction against the respondent No.2 (original defendant). It is claimed by the respondent No.1 that he is owner of the suit property and that the respondent No.2 has encroached upon the same. A decree is claimed by the respondent No.1 from the Court below for possession of the suit property and a direction restraining the respondent No.2 from interfering with the possession in the suit property.

3. The respondent No.2 filed written statement in the said suit and claimed that for the past 35 to 37 years, he and his father had been in possession openly and continuously in respect of the suit property. A specific assertion was made that due to the said fact the respondent No.1 had no right to claim reliefs sought in the suit. In this suit, a contention was filed by the petitioner herein under Order 1 Rule 10 of CPC, claiming that he had right to intervene in the matter. It was claimed that the petitioner was estranged brother of respondent No.2 and it was he who was in continuous possession of the suit property. It was claimed that since the petitioner and the respondent No.2 were not on talking terms, this fact was not brought to the notice of the Court below. It was further claimed that father of the petitioner and the respondent No.2 had made an oral declaration regarding the suit property in favour of the petitioner and that he was necessary party in the suit. The Court below has considered the application of the petitioner and it has found that that no ground has been made out by the petitioner in respect of the prayer made in the application and accordingly, the application has been rejected.

4. The learned counsel appearing for the petitioner has contended that since the petitioner claimed that there was an oral declaration by his father

as regards ownership of the suit property, he was a necessary party in the proceedings before the Court below. It was further submitted that the relationship between the petitioner and the respondent No.2 was strained and, therefore, this aspect ought to have been taken into consideration by the Court below while passing the impugned order.

5. On the other hand, the learned counsel appearing for respondent No.1 submitted that no interference was warranted in the impugned order passed by the Court below, because there was nothing on record to support the contentions raised on behalf of the petitioner. It was emphasized that the petitioner was the owner of the land in question by virtue of Will executed in his favour and further even 7/12 extracts recorded the name of the petitioner as owner of the suit property.

6. The respondent No.2 was served, but, he chose not to appear before this Court.

7. Having heard the learned counsel for rival parties and upon perusal of the impugned order passed by the Court below, it needs to be examined whether the petitioner has made out any case for consideration of his prayer under Order 1 Rule 10 of CPC. The said provision gives power to the Court to add any party in the suit if the Court is satisfied that the presence of

such a party is necessary for determination of real matter in dispute between the parties.

8. In the present case, a perusal of the plaint and written statement on record shows that while the respondent No.1 has placed reliance on the Will to claim ownership of the suit property and reference has made to the record of rights i.e. 7/12 extract, which records the name of the respondent No.1 as owner of the suit property. In the written statement, the respondent No.2 has emphatically claimed that he along with his father were in open and continuous possession of the suit property for the past 35 to 37 years. There is no whisper in the written statement about any claim of the petitioner herein.

9. In this backdrop, it needs to be examined whether the presence of the petitioner can be said to be necessary for determination of the real matter in dispute in the said pending suit before the Court below. A perusal of the plaint on record shows that the real matter in dispute is the claim of the respondent No.1 that he is owner of the suit property, on the basis of which he claims the decree of possession against respondent No.2. The respondent No.1 has claimed that the respondent No.2 is a rank encroacher and, therefore, possession of the suit property has to be handed over to the respondent No.1. In this situation, considering the material on record and the nature of

the statement made in the application filed on behalf of the petitioner, it becomes clear that there is no basis for the contention raised on behalf of the petitioner. All that is stated in the application filed on behalf of the petitioner before the Court below is that there was an alleged oral declaration by the father of the petitioner regarding ownership of the petitioner in the suit property. Such a statement is of no consequence, considering the fact that the respondent No.1 is proceeding on the basis of a Will, claiming ownership in the suit property and there is nothing on record to even remotely suggest any interest or right that the petitioner could claim in the suit property, in the facts and circumstances of the present case. Therefore, his presence is certainly not necessary before the Court below for determination of the real matter in dispute.

10. In view of above, there is no merit in the present writ petition and accordingly, it is dismissed.

JUDGE