

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3683 OF 2014

VIMAL SHIVRAM RAJGURU
VERSUS
MUNICIPAL COUNCIL, PARBHANI AND ANOTHER

...

Advocate for Petitioner : Mr. Mukhedkar Amit A.
Advocate for Respondent No.1: Mr. Bora Satyajit S.

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 8th December, 2021

PER COURT :

. This petition takes exception to the order passed by below-38 in R.C.S No.181/2008 by the learned 2nd Joint Civil Judge, Junior Division, Parbhani, thereby allowing the application filed under Order 1 Rule 10 of the Civil Procedure Code (for short "CPC") of the respondent No.2.

2. By filing R.C.S. No.181/2008, the petitioner/original plaintiff sought a declaration that the action proposed by the defendant/Municipal Council, Parbhani in pursuance of the complaint dated 07-01-2008 and the notice dated 21-06-2008 be declared as illegal, ultravirus and not binding on the plaintiff. Perpetual injunction not to disturb the peaceful possession of the plaintiff in respect of the property bearing House No.1123, Ward No.11 in any manner is also sought.

3. In the suit initially, an application under Order 1 Rule 10 of CPC was filed by the Chairman of the respondent No.2 in his individual capacity which was rejected by the trial court. The rejection order was challenged before this Court. The said writ petition was dismissed by this Court holding that *“it would have been another thing if the society would have made an application to be impleaded as party defendant. But the petitioner has filed this application in personal capacity, he cannot have any right in the suit property nor any relief is claimed against the petitioner”*.

4. After passing of the order by this Court, application Exhibit 52 was filed under Order 1 Rule 10 of CPC seeking to add the society as a party defendant in the suit. The said application is allowed, this order is impugned by the petitioner.

5. Heard the learned advocate for the petitioner and learned advocate for respondent No.1/Municipal Council. Though respondent no.2 is served, he has not filed any appearance.

6. The learned advocate for the petitioner strenuously submitted that the petitioner being original plaintiff is a dominus litis and he has right to add necessary party. No relief is claimed against the defendant no.2/society and in that view of the matter, the society is not a necessary

party. The impugned order passed by the trial court is, therefore, unsustainable and the same may quashed and set aside.

7. The learned advocate for respondent No.1/Municipal Council, on the other hand, supported the impugned order. He submitted that the respondent No.2/society complained to the Municipal Council against the petitioner. On the basis of the complaint of respondent No.2/society, notice impugned in the suit is issued to the petitioner/original plaintiff. He therefore submitted that the society is a necessary party.

8. It is not in dispute that earlier application filed by the Chairman of the respondent no.2/society was rejected and the rejection order is confirmed by this Court. While rejecting the writ petition, this Court has observed that it would have been a different case if the society had filed the application for impleadment.

9. It is a matter of record that admittedly, a complaint was submitted to the Collector, Parbhani on 07-01-2008 alleging that, the construction over the suit property is illegal and unauthorized. The Collector forwarded the said complaint to the respondent No.1/Municipal Council and on the basis of the said complaint, respondent No.1/Municipal Council issued the notice dated 21-06-2008 to the

petitioner/plaintiff which is challenged in the suit. The respondent No.2/society has right title and interest in the suit property and therefore, it is a necessary party in the suit. The trial court was right in observing that, so as to enable the Court for effectively adjudicating the question involved in the suit, society is the necessary party. No fault can be found with the reasoning given by the trial court, while allowing the application filed by the respondent No.2/society. There is no illegality or perversity in the order impugned in the present petition. The writ petition is, therefore, dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)