

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

WRIT PETITION NO.13935 OF 2021

**CHANDRABHAGABAI KANHU MISAL
VERSUS
MITTHULAL RAMNATH PALVE AND OTHERS**

...

Advocate for Petitioner : Mr. Hemant U. Dhage
AGP for Respondents – State : Mr. P. G. Borade
Advocate for Respondent No.3 : Mr. A. B. Dhongade

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th DECEMBER, 2021

PER COURT :

1. This petition impugns order dated 09-10-2021, passed by the learned 4th Joint Civil Judge, Senior Division, Beed, below application Exhibit-22 in Regular Civil Suit No.195/2021, filed by the petitioner seeking to implead her as a defendant in the suit.
2. Respondent No.1 – original plaintiff filed R.C.S No. 195/2021, challenging the notice issued by the respondent Nos. 2 and 3, for removal of his encroachment/construction of hotel. In the said suit, the petitioner filed application Exhibit-22, under Order 1 Rule 10 of the Code of Civil Procedure, seeking direction to add the petitioner as a defendant on the ground that the petitioner has interest in the suit property. The petitioner had, on 31-05-2017, purchased 0.06R land

from the suit property. In that behalf, three different suits are pending between the petitioner and respondent No.1 – original plaintiff.

3. The application Exhibit-22 is rejected by the trial Court, holding that it is not the case of the petitioner that the defendant Nos. 1 to 4 have started acquisition proceeding of the land of the petitioner. In that view of the matter, the petitioner has no concern with the relief claimed in the suit. The relief claimed in the suit, even if granted, it would not operate against the petitioner. So also, it would not decide the ownership of the plaintiff against the petitioner or affect the ownership of the petitioner. In the suit, only the notice issued to defendant Nos. 1 to 4 is challenged and an injunction is sought that no action be taken on the basis of the said notice. The trial Court has observed that if the petitioner has any issue about the ownership of her land, she is at liberty to take necessary steps to initiate appropriate proceedings before the competent Court against the plaintiff. In the suit, only relief is claimed against defendant Nos. 1 to 4 and therefore, the petitioner has no concern with the suit proceedings. Even if decree is passed in the suit, the same will not be binding on the petitioner.

4. The trial Court has passed a well reasoned order and there is no illegality or perversity in the impugned order.

5. The learned advocate for the petitioner relied in **Aijaz @ Azaz Mohammed Shaikh Vs. Municipal Corporation of Greater Bombay and Another**, reported in **2012(2) ALL.M.R. 171**, wherein at the instance of the petitioner therein, the authorities initiated proceedings for removal of encroachment. According to the learned advocate for petitioner, in the present case also, at the instance of the petitioner the notice for removal of encroachment was issued and, therefore, the petitioner has interest and she ought to have been added as a defendant. Merely because at the instance of petitioner notice was issued to plaintiff, that by itself is not sufficient ground to implead the petitioner. I am, therefore, not inclined to accept the said arguments.

6. For the aforestated reasons this Court is of the opinion that the trial Court was perfectly justified in rejecting the application filed by the petitioner. No case is made out to warrant interference in the extraordinary writ jurisdiction. Writ petition is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)