

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6506 OF 2021

Rahul Govind Bhange & Ors. .. Petitioners

Vs.

Rajendra Janardhan Shelke
& Ors. .. Respondents

...

Mr. Rohan Sawant with Mr. Prabhakar M. Jadhav for the petitioners.

Mr. Surel S. Shah for the respondents.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 25TH OCTOBER, 2021.

P.C:-

1. By the present writ petition, the petitioners, who filed an application seeking their impleadment as party respondents in the suit filed by the plaintiff seeking perceptual mandatory injunction came to be rejected by the impugned order dated 12/08/2021.

2. The plaintiff had instituted the suit, where he claimed a relief against the original defendants qua a right of path to be

carved out from Gat No.176/3/ 190, 193/1/1/ 193/1/2 and 195/3A from his property being located in Gat No.195/1A and 195/2A leading to a public way of access for the purpose of transporting trucks, trolleys, bullock carts, etc. He sought an injunction against the defendants and prayed that the said path / way should be opened for him. This relief is sought on the basis of the earlier order granted in his favour by learned Joint Civil Judge, Junior Division, Malshiras on 21/10/2016 in Regular Civil Suit No.858 of 2010, wherein the defendants in the said suit were directed to remove the obstruction and clear the suit way which runs towards eastern side of land Gat No.176/3, 193/1/1, 193/1/2 and 195/3A. While allowing the said application for injunction, the property being land at Gat No.190 was specifically excluded with a specific finding being returned to the effect that the sale deed to which the plaintiff has relied upon and claimed that he has purchased property 1A from defendant No.2 and property 1B from defendant No.1 by sale deed dated 6/2/2007, there was no mention of land Gat No.190.

3. In the present suit, when the relief is sought by the plaintiff as against the said defendants reiterating the right, which was granted in the year 2016, the present third parties are seeking their impleadment on the ground that petitioner No.1 is the owner of Gat No.190 and petitioner Nos.2 to 4 are co-owners of Gat No.195. The application filed before learned Judge under Order 1 Rule 10 vide Ex-73 however, does not contain any

pleading to the effect that the petitioner No.1 is the owner of Gat No.190 or petitioner Nos.2 to 4 are co-owners of Gat No.195. Learned Judge has considered the scope of the relief claimed by the plaintiff in a suit filed for permanent and mandatory injunction based on sale deed dated 06/02/2007, which reveals that the disputed road runs towards eastern side of block No.176/3, 193/1/1, 193/1/2 and 195/3A, which grant him an access to the Government road. Referring to the injunction granted on 21/10/2016 and recording that the said order has been upheld till the High Court, the Court has recorded that the third parties are claiming to be the legal heirs of one Mukund Sitaram Bhangre and, in turn, they are claiming the right in the suit property with a relief for impleading them as parties. Recording that they are indirectly challenging the sale deed and recording that in terms of Order 1 Rule 9 of the CPC, they are not the necessary parties, the application came to be rejected.

4. In the absence of the petitioners demonstrating their interest in the suit instituted by the plaintiff, who is the *dominus litis* and unless and until, they are found to be necessary parties, without whom, the relief cannot be granted, the order rejecting their impleadment cannot be faulted with. The impugned order is, therefore, upheld. Writ petition is dismissed.

[SMT. BHARATI DANGRE, J.]