IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1124 OF 2021

JANKIRAM PANDITRAO PATTEWAR
VERSUS
SAYED AKBAR ALI SAYED AMJAD ALI AND OTHERS
...
Advocate for Petitioner : Mr. M.M. Patil Beedkar
Advocate for Respondent Nos.2 and 3 : Mr. S.B. Chavan
....

[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 7th June, 2022

ORDER :

. The petitioner is aggrieved by the order passed by the learned 2nd Joint Civil Judge Senior Division, Parbhani thereby allowing the application filed by the respondent Nos.2 and 3 under Order 1, Rule 10 of the Civil Procedure Code and adding them as defendant Nos.2 and 3 respectively.

2. Petitioner/plaintiff filed Regular Civil Suit No. 142 of 2019 for perpetual injunction against the respondent No.1/defendant, restraining intereference into the peaceful possession and enjoyment of plaintiff in respect of land Gut No.76 totally admeasuring 03H 02R, to the extent of 61 R

out of Gut number No.76 situated at village Kaudgaon, Tq. & Dist. Parbhani, as per boundaries mentioned in the plaint (hereinafter it is referred as *'suit land'*).

3. In the said suit the respondent Nos.2 and 3 filed application (Exh.15) under Order 1 Rule 10 of Civil Procedure Code contending that, they had filed Regular Civil Suit No.125 of 2001 against Mohd. Khadiroddin S/o. Zainoddin in respect of portion of land Gut No.76. The said suit was compromised and compromise decree was passed. It is further contended that, the petitioner has described wrong boundaries in the plaint, they are in possession of 61R land from Gut No.76. The petitioner is not having any right in suit property. Though they are necessary parties. The petitioner has not added them as party defendants.

4. The Trial Court allowed the said application mainly on the ground that, after perusal of the documents of Regular Civil Suit No. 125 of 2001 which is filed by the respondents against Mohd. Khadiroddin, wherein compromise decree was passed and as per the compromise decree portion of land Gut No.76 is purchased by respondent Nos.2 and 3 for

the consideration of Rs.95,000/-. From the compromise decree the Trial Court *prima-facie* came to a conclusion that, the respondent Nos.2 and 3 have concern with the suit land and how they are concerned with the suit land is to be proved by them. By adding the respondent Nos.2 and 3 as party defendants no prejudice is likely to be caused to the petitioner-plaintiff. The application filed by the respondent Nos.2 and 3 is therefore allowed by the Trial Court. The petitioner is aggrieved by the same.

5. Heard the learned advocate for the petitioner and learned advocate for respondents.

6. Learned advocate for the petitioner streneously submitted that, the suit is for simplicitor injunction against respondent No.1. The petitioner being *dominus litis* is entitled to choose against whom, he would seek injunction. He has no grievance against the respondent Nos.2 and 3 and they are not necessary parties. According to him, if the respondents No.2 and 3 have any grievance, they are entitled to file seperate suit, therefore, the impugned order is liable to be quashed and set aside.

7. Learned advocate for the respondents supported the impugned order. He submits that, in view of the compromise decree, respondent Nos.2 and 3 are the owners and possessors of portion of land out of Gut No.76 and there is no 61 R land remaining in the said Gut number which the petitioner claims to be owner and possessor of as suit land. Since the respondent Nos.2 and 3 are the owners and possessors of the land out of Gut No.76, they are necessary party and no prejudice will be caused to the petitioner if they are added as party defendants.

8. The record indicates that petitioner/plaintiff has filed suit for perpetual injunction against the respondent No.1/defendant, who is father of respondent Nos.2 and 3. It is settled legal position that, the plaintiff is *dominus litis* and is entitled to claim relief against the person who has caused obstruction to the enjoyment and peaceful possession of the plaintiff. Since the petitioner is aggrieved by the obstruction by the defendant No.1 to the enjoyment of the suit property, he has arrayed respondent No.1 as party defendant.

9. The Trial Court has failed to consider the contention of the petitioner that, the property shown and the compromise, relied upon by the respondent Nos.2 and 3 is in respect of different property than the suit property. The compromise is in no way related to the suit property. The Trial Court has failed to appreciate the documents placed on record and the rival contentions of the parties in the proper perspective and has erred in allowing the application filed under Order 1, Rule 10 of the Code of Civil Procedure. If at all respondent Nos.2 and 3 have any grivance, they may file separate suit.

10. In the result, writ petition is allowed in terms of prayer clause 'B'. The impugned order passed by the learned 2nd Joint Civil Judge, Senior Division at Parbhani, below Exh.15 in R.C.S. No.142 of 2019 is hereby quashed and set aside.

11. Application (Exh.15) stands rejected.

12. Rule is made absolute in above terms.

13. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

Pooja K.