

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5117 OF 2019

Taluka Shetkari Shikshan Prasarak Mandal Sangola
Through its Secretary,

Mr. Vithalrao Sakharam Shinde

..Petitioner

Versus

Mr. Madhukar Narhar Hirphode and Ors.

..Respondents

Mr. Rahul Kasbekar i/by Surel Shah, for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th JANUARY, 2022

PC.

1. The petition is directed against the order dated 15th October, 2018 passed by the learned Joint Civil Judge Junior Division, Sangola in suit being Regular Civil Suit No.315 of 2002, in which the petitioner's/third party's prayer for impleadment vide Exh.431 under Order I Rule 10(2) of CPC came to be rejected.

2. The respondents initiated aforesaid suit for partition and separate possession. In the suit, aforesaid application was taken out by the petitioner/third party alleging that the aforesaid suit was unconditionally withdrawn on 13th August, 2003, however, the respondents/defendants preferred counterclaim, as such proceedings were continued. In suit property being Survey No.248/2B/2, the petitioner/third party claim to have interest and is in possession of the said property since 1972. As such, it is claimed that in view of the settled possession of the petitioner, the

petitioner is necessary party to the proceedings.

3. The factual matrix on which the petitioner laid foundation is, the original owner Balu Biru Raut sold the said property to Vasantrao Patil. Said Vasantrao Patil purchased the property as Chief Promoter of proposed Mahatma Jyotirao Phule Co-operative Housing Society vide sale-deed dated 25th January, 1971. It is claimed that the said proposed society never became juristic entity. Mr. Vasantrao Patil was also Vice-President of the petitioner society has handed over possession to the petitioner on 17th June, 1972 since then the petitioner is in possession and claim to be enjoying the same as gratuitous occupier. After the suit was withdrawn by Respondents Nos.1 to 7/Plaintiffs on 13th August, 2003, original defendant Nos.1 to 8, 10 to 18, 20 to 23, 25, 28 to 30 preferred counter claim. Defendants in said counterclaim allege that they have 1/30th share each in the suit property and accordingly sought declaration, partition and possession.

4. The claim was resisted by the respondents/plaintiffs. It is claimed that the petitioner has no connection whatsoever with the property in question. It is further claimed that one Vithal Sakharam Shinde also claims to be the Secretary of the petitioner society has sought intervention in the very same capacity. In the aforesaid background, it is claimed that the petitioner society for want of legal right cannot be permitted to intervene in the counter claim proceedings. The Trial Court vide reasoned impugned order has rejected the prayer for impleadment. The petitioner/third party on

8th September, 2017 moved application Exh.431 for impleadment on the aforesaid background of possession.

5. Upon appreciation of the claim put forth by the petitioner, it is not made out as to what is enforceable legal right available to the petitioner against the plaintiffs particularly having regard to the lis which is to be adjudicated in regard to right to partition. The petitioner as such does not appear to be necessary or appropriate party to effectively adjudicate lis. The only right as could be inferred from the pleadings of the petitioner is that of their permissive possession. Such possession cannot lead to draw an inference that that the petitioner has an enforceable legal right in the suit and as such the Court in absence of petitioner cannot effectually or completely adjudicate the issue.

6. The Trial Court has considered the aforesaid facets of the matter and having noticed that the petitioner has no legal enforceable right was justified in dismissing the claim for impleadment.

7. That being so, in my opinion, no case for interference in the extraordinary jurisdiction of this Court is made out.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]