

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.590 OF 2020

Vaishali Suresh Puppal

...Petitioner

Versus

Nandkishor Kisanlal Lahoti And Another

...Respondents

Mr. S.R. Andhale, Advocate for the petitioner.

Mr. R.F. Totala, Advocate for respondent No. 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th MARCH, 2023

ORDER :

1. The petitioner is aggrieved by order passed by learned 4th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-153 in Regular Civil Suit No. 262/2014, thereby rejecting the application filed by the petitioner, under Order 1 Rule 10 of Code of Civil Procedure.

2. The respondent No. 1/original plaintiff has filed a suit praying that illegal construction made by the defendant abutting to the southern door in the southern passage way and abutting to the eastern wall be demolished.

3. The suit is contested by the defendant and the matter is for final arguments. At this stage, application Exhibit-153 is filed seeking impleadment of the petitioner as a defendant, which is rejected.

4. Heard the learned advocate for the petitioner and learned advocate for Respondent No. 1 at length. Though served, none appears for respondent No. 2. Perused the grounds raised in the petition, annexures thereto and documents placed on record.

5. Learned advocate for respondent No. 1/original plaintiff on instructions makes a statement that plaintiff is not seeking demolition of construction of petitioner. Only relief sought is that illegal obstruction made in the passage way be demolished and demolition of construction by which plaintiff's shops door is closed by the defendant. According to the learned advocate for the plaintiff same is specifically pleaded in paragraph no. 6 of the plaint (at page No. 22).

6. Perusal of impugned order shows that the suit which is filed in the year 2014 is pending for final arguments. At this

stage, application Exhibit-153 is filed on 05.10.2019.

7. The Trial Court has observed in the impugned order that the suit is not filed for demolishing any property of the defendant and it is not touching to the rights or interest of the suit property belonging to the defendant. The petitioner might have substantial interest in the property of defendant, however, considering the prayer clause of the suit, no irreparable loss will be caused either to the property of defendant or his sister (third party/petitioner). It is further observed that the plaintiff is restrained from proceeding from the passage/common pathway due to obstruction on the part of the defendant. It is therefore held that there is no involvement of the property of defendant against which adjudication is sought by the plaintiff. The Trial Court has therefore rightly rejected the application. There is no illegality or perversity in the order impugned in the present petition. The petition being devoid of merit, is dismissed.

7. The amount of Rs. 50,000/- deposited by the petitioner is directed to be paid to respondent No. 1, as a cost in terms of order dated 17.01.2020.

[NITIN B. SURYAWANSHI, J.]