

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.700 OF 2023

SHAIKH KADU SHAIKH RAHEEM AND ANOTHER
VERSUS
SHAIKH NOOR SHAIKH MEHBOOB AND OTHERS

Mr. Vaidya Ameet R., Advocate for the Petitioners.
Mr.B.S.Choure, Advocate for Respondent Nos.1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : MARCH 01, 2023.

PER COURT :

1. Leave to amend to add Shaikh Lal Shaikh Maheboob, as party respondent No.7. Amendment to be carried out forthwith.
2. The petition takes exception to the order dated 29th November, 2022 rejecting the petitioner's application for impleadment of the respondent No.7. The petitioners herein had instituted the proceedings in respect of the property bearing Gut No.121/2 situated at Mauje Gadegaon, Talauka Paithan, District Aurangabad. By this proceeding, the petitioners sought restraining order against the defendants from interfering with the possession of the plaintiffs over the suit property and for recovery of possession of the encroached portion.
3. The petitioners came with a case that Respondent

nos.1 to 3 had committed encroachment over their property. An application came to be filed for appointing the Taluka Inspector of Land Records as the Court Commissioner for the purpose of measurement of Gut No.121/2 and Gut No.121/1 belonging to defendant no.3. Pursuant to the execution of the commission, the map alongwith the report was placed on record. On perusing the the map, the petitioners found that the area out of Gut No.121/1 in possession of the Respondent no.7 is more than what has been noted in the revenue records. On the basis of this report, the petitioners' claim that as such respondent Nos.1 to 3 and respondent No.7 have encroached upon the suit property. The application came to be rejected, and as such the petitioners are before this Court.

4. The proceedings were instituted by the petitioners seeking recovery of the encroached portion of the suit property, which according to the petitioners had been encroached upon by the respondent Nos.1 to 3 and for restraining order, restraining the respondent Nos.1 to 3 from interfering with the possession of the petitioners over the suit property. It was not the case of the petitioners that the respondent No.7 has encroached upon the suit property and rightly so, as pointed by the Trial Court that the property of the respondent no.7 is not adjacent to the property of the petitioners.

5. The case of the petitioners for impleading the proposed respondent no.7 as a party is on the basis of the map produced by the Court Commissioner along with the report. It appears that the area which is in possession of the respondent no.7 does not tally with the area in the revenue records. Based on this an assumption has been drawn by the petitioners that the proposed respondent no.7 has encroached upon the area of the suit property. There is absolutely no basis for such an assumption and an application for impleadment cannot be sustained on the basis of such assumption. It is necessary for the petitioners to prove that the impleadment of the proposed respondent is necessary for effective adjudication of the controversy in issue.

6. In the present case, the petitioners have not been able to substantiate that any part of the suit property has been encroached upon by the Respondent no.7. The only case is that it appears from the map prepared by the Court Commissioner that the area in possession of the respondent no.7 does not tally with the revenue records. In such a case, if any claim for ownership is made by the petitioners, the appropriate remedy lies elsewhere and not by way of an application under Order I Rule 10, impleading the Respondent no.7. Pertinently, the trial Court has noted that property of the respondent no.7 is not adjacent to that of the petitioners. In such a case, it is difficult to comprehend as to how

the respondent no.7 is a proper and necessary party in a suit seeking recovery of possession of the encroached portion.

7. In light of the above, there is no merits in the petition. Writ Petition stands dismissed. No costs.

(SHARMILA U. DESHMUKH, J.)