

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3510 OF 2022

Shaikh Shakil Shaikh Chhotu
and another

.... Petitioners

Versus

Satish @ Gulabrao Balbhimrao Deshmukh
and others

.... Respondents

.....

Mr. Rajendrraa Deshmukh, Senior Advocate a/w Mr. Shriram V. Deshmukh, Advocate i/b Mr. Devang R. Deshmukh, Advocate for the Petitioners

Mr. Bhushan Kulkarni, i/b Mr. B.B. Kulkarni, Advocate for Respondent Nos.1 to 8

Ms. G.L. Deshpande, Advocate for Respondent No.10

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th APRIL, 2023

ORDER :

1. The order passed by learned Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-41 in Regular Civil Suit No.565 of 2018 is challenged in the present petition.

2. Petitioners/original plaintiffs filed the suit for permanent injunction against defendants/respondent Nos. 9 and 10. Respondent Nos.1 to 8 have filed application Exhibit-41 seeking their impleadment under Order I Rule 10 of the Code of Civil Procedure. The Trial Court has allowed the said application. Hence, the present petition.

3. Heard the learned senior advocate for the petitioners, learned advocate for respondent Nos.1 to 8 and learned AGP for respondent No.10/State. None appears for respondent No.9. Perused the memo of writ petition, annexures and the impugned order.

4. It is not in dispute that the suit for perpetual injunction is filed against the defendants/respondent Nos. 9 and 10. The present respondent Nos. 1 to 8 have filed application Exhibit-41 under Order I Rule 10 of the Civil Procedure Code claiming that they have purchased properties bearing CTS No.9333/2 and 9233/4 by registered sale deed dated 22/08/1990. Their names are recorded in P.R. card. The suit is filed for total four properties, and out of it they are owners and possessors of those two properties, and they have direct interest in the suit properties, and if any decree is passed in the suit, it will affect their right and interest in respect of those two properties.

5. The trial Court has recorded a finding that if the applicants/respondent Nos.1 to 8 are not allowed to be impleaded in the suit, the finding recorded and judgment or decree delivered in their absence would definitely affect

their right, interest in the suit property as they are also claiming their possession upon portion of suit property. The Trial Court has therefore held that in the suit for permanent injunction of this kind, the applicants/respondent Nos. 1 to 8 may not be necessary parties, but they are definitely proper parties to the suit, and therefore, they can be added as defendants under Order I Rule 10 of the Code of Civil Procedure to avoid multiplicity of litigation and their addition would help the Court to give complete and effective relief to either party.

6. Learned Senior Advocate by pointing out the order passed below Exhibit-16 submits that in a similar situation, the application filed by other party for impleadment in the same suit is rejected by the same Court. Whereas, in similar set of facts, the present application is allowed. Since the Trial Court has come to a conclusion that the respondent Nos. 1 to 8 are proper parties and their presence would help the Court to give complete and effective relief to either party, and it would avoid multiplicity of proceedings, I am not inclined to interfere in the impugned order passed by the Trial Court in extraordinary writ jurisdiction.

7. Writ Petition being devoid of merit is dismissed.
8. Interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane