

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2182 OF 2018
WITH CA/11088/2023 IN WP/2182/2018

Sumitra @ Sumitrakumar Dinkarrao
Tribhuwan & Others

Petitioners
[Orig. Plaintiffs]

VERSUS

The Collector Ahmednagar And Others

Respondents
[Res. No. 1 to 7- Orig.
defendants & resp. No.
8 to 14 third party
applicants]

Mr. D.A. Mane h/f. Mr. M.M. Patil Beedkar, Advocate for
petitioners.

Mr. S.N. Kendre, AGP for respondent-State.

Mr. S.B. Gorde, Advocate for respondent Nos. 8, 11, 13 and 14.

Mr. Ajinkya Kale h/f. Mr. Rajesh Mewara, Advocate for respondent
Nos. 7a to 7c.

Mr. R.R. Karpe, Advocate for respondent No. 12.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd OCTOBER, 2023

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India, impugns the order passed by learned Civil Judge, Senior Division, Kopargaon, below Exhibit-124 in Regular Civil Suit No. 79/2010.

2. Petitioners/plaintiffs filed suit for declaration and

permanent injunction against seven respondents/defendants. One of the suit property is Gut No. 438/2, admeasuring 1 Hectare 76 Are. Original defendants opposed the suit by filing written statements. Interim injunction is granted in favour of petitioners.

3. Respondent Nos. 8 to 14, as third party filed application Exhibit-124, under Order 1 Rule 10 of CPC contending that Gut No. 438/1/2 is wrongly described in the plaint and wrong boundaries are mentioned. They own and possess 93 Are land in Gut No. 438/1/2 which is part of suit land admeasuring 1 Hectare 76 Are mentioned in the plaint. Therefore, they are necessary party and claimed to be impleaded as defendants. Plaintiffs opposed this application by filing detail say. Trial Court allowed the application solely on the ground that in 7/12 extract and 8A extract of Gut No. 438/2, names of third party-applicants are mentioned, therefore, they are necessary party. Trial Court directed plaintiffs to add third party-applicants as party defendants. This order is impugned in the present petition.

4. Heard the learned advocate for petitioners, learned Assistant Government Pleader for respondent-State and learned

advocates for respondents. Perused the memo of writ petition, annexures thereto, impugned order and the citation relied upon by the learned advocate for petitioners.

5. By filing civil application Respondent Nos. 7(a) to 7(c)/defendants have claimed that due to subsequent events, stay granted in this petition is liable to be vacated. In civil application it is pointed out that, by filing amendment application Exhibit-170 in the suit, plaintiffs have sought amendment. They have claimed that due to typographical error area of Gut No. 438/2 is wrongly mentioned as 1 Hectare 76 Are and in fact area owned by respondent Nos. 7(a) to 7(c) is 83 Are only and plaintiffs have grievance against respondent No. 7 and his heirs only. It is further stated that third party-applicants are having 93 Are area in Gut No. 438/2 and petitioners/plaintiffs have whatsoever no grievance about 93 Are area owned and possessed by third party-applicants. It is claimed that since stay is granted to the suit, Trial Court has not passed any order on amendment application.

6. In civil application, it is also claimed that third party-applicants have sold out portion of their area out of 93 Are land by way of registered sale deed and petitioner No. 1/plaintiff is

consenting party to the said sale deeds.

7. In view of aforesaid developments, impleadment of third party/respondents in the suit is of no consequence. Learned advocate for petitioners has rightly relied on the decision of learned Single Judge in Writ Petition No. 5330 of 2009, wherein it is held;

"8. It is required to be assessed as to whether the third party applicants can be said to be either necessary or proper parties to the suit. Considering the contentions raised in the plaint, there are no averments made in the plaint in respect of any act giving rise to any cause of action against the proposed third party applicant. What is alleged in the plaint is that the defendants, who are impleaded in the suit, have caused interference in the peaceful possession of the plaintiffs over the suit property and as such, it has become necessary for the plaintiffs to seek a restraint order against them. If at all, the third party applicants have acquired any right or entitlement in relation to the property, they may have to prove their case independently and they cannot be permitted to seek relief in a suit instituted by the plaintiffs. When no relief is claimed against the third party applicants, they are not likely to be affected by the decree that would be passed in the suit.

9. Considering the contentions raised by the original plaintiffs and considering the nature of claim raised in the suit, it cannot be said that the third party applicants are either necessary or proper party to the suit. The plaintiffs herein have specifically averred that the third party applicants are not likely to be affected by the decree that may be passed in the suit and that the third party applicants may be required to establish their claim independently. In this view of the matter, the order passed by the trial court, directing impleadment of the third party applicant is required

to be quashed and set aside."

8. In view of above observations and settled legal position that plaintiff is dominus litis and he cannot be forced to add third party against whom he has not claimed any relief and in the light of subsequent developments brought on record in the civil application, writ petition deserves to be allowed.

9. In the result, Writ petition is allowed.

10. Impugned order dated 05.01.2018, passed by learned Joint Civil Judge, Senior Division, Kopargaon, below Exhibit-124 in Regular Civil Suit No. 79/2010, is hereby quashed and set aside.

11. Trial Court shall decide application Exhibit-170, within a period of four weeks from the date of receipt of writ of this order.

12. Civil application is disposed of.

[NITIN B. SURYAWANSHI, J.]