

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10237 OF 2023

Sudhir S/o Sudhakar Rao Deshpande
Since deceased through L.Rs.
Pratima W/o Sudhir Deshpande
and others

.... Petitioners

Versus

Arun S/o Narayan Rao Chidrawar
and others

.... Respondents

.....

Mr. Mukul S. Kulkarni, Advocate for the Petitioners
Mr. V.V. Bhavthankar, Advocate h/f Mr. Ashutosh S. Kulkarni,
Advocate for Respondent Nos.1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th AUGUST, 2023

ORDER :

1. Order passed below Exhibit-153 in Regular Civil suit No.146 of 2008 by the learned Joint Civil Judge, Junior Division, Degloor is questioned in the present petition.

2. The petitioner filed suit for injunction. By way of amendment, the relief of possession is sought. Suit is filed only against respondent Nos.3 and 4. Respondent Nos.3 and 4 opposed the suit by filing written statement with a specific contention that they are not concerned with any portion of the land (Gut No.592) or forming of its gut during consolidation

scheme. False and imaginary boundaries shown by the plaintiff of land Gut No.592 as the plaintiff is intending to encroach upon land Gut No.620 admeasuring 44 R situated at Degloor belonging to defendant Nos.1 and 2/respondent Nos.3 and 4. Thereafter, Commissioner is appointed to measure the land of parties. He submitted his report. It is revealed in the Commissioner's report that in fact there is an encroachment in land Gut No.592 by the defendants. After the Commissioner's report was filed in the Court, defendants filed application Exhibit- 77, seeking amendment in their written statement practically substituting entire written statement. The said application is rejected by the Trial Court by order dated 03/08/2015. The said order is challenged in writ petition (stamp) No. 31342 of 2015, which is pending for admission.

3. Present respondent Nos.1 and 2 then moved an application under Order I Rule 10(2) of the Code of Civil Procedure for adding them as defendants in the suit, contending that they are legal heirs of Narayanrao, and they owned the suit property i.e. Survey No.202/1, which was converted in Gut No. 592, and the said property to the extent of 1 Acre 04 *Gunthas* was jointly purchased by their father Narayanrao and defendant No.2 by registered sale deed.

Their father was in joint residence with his brother Kishanrao. Except Gut No.592, all joint family properties partitioned between their father Narayanrao and his brother Kishanrao. Narayanrao expired on 02/05/1986, and since then they have inherited the suit property along with other heirs of Narayanrao and respondent Nos.3 and 4. They therefore claimed to be necessary parties to the suit, and hence prayed for allowing that amendment. The Trial Court has allowed the application. Hence, the present petition.

4 Heard the learned advocate for the petitioners and the learned advocate for respondent Nos.1 and 2. Learned advocate for the petitioners submits that notices to respondent Nos. 3 and 4 are not necessary as they are having a common interest with respondent Nos.1 and 2. Perused the writ petition memo, annexures thereto, impugned order and the citation relied upon by the learned advocate for the petitioner.

5. It is a matter of record that in written statement filed by defendant Nos.1 and 2/respondent No.3 and 4, a specific stand is taken that, defendant Nos.1 and 2 are in no way concerned with any portion of land gut no.592 or forming of its gut during consolidation scheme, hence, the contents are denied. The plaintiff by showing false and imaginary

boundaries of land gut no.592 is intending to encroach upon the land of defendants No.1 and 2 i.e. gut no.620 admeasuring 44 R situated at Degloor. It further appears from the record that, during the pendency of suit, the Court Commissioner was appointed and in the report of the Court Commissioner, encroachment on the part of defendants is reflected. Consequently, the defendants were compelled to filed application under Order VI Rule 17 of the Code of Civil Procedure, seeking almost substitution of their entire written statement, taking totally contrary stand by way of amendment. The said application is rejected and the challenge to the said rejection is pending in this Court.

6. Considering the specific stand of the defendants in the written statement, and *prima facie* considering the Commissioners report, and map, there does not appear any involvement of respondent Nos.1 and 2 in the subject matter of the suit property. It appears that the stand taken by defendant Nos.1 and 2 is found to be baseless and incorrect. According to respondent Nos.1 and 2, they have sought their impleadment as defendants in the suit filed by the plaintiff so as to take necessary defence, while defending the suit.

7. Learned advocate for the petitioner/plaintiff has rightly relied on ***Sudhamayee Pattnaik and Ors. Vs. Bibhu Prasad Sahoo and Ors., AIROnline 2022 SC 120***, wherein it is held;

"5..... As per the settled position of law, the plaintiffs are the domius litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.

6.....

7. However, at the same time, considering the fact that defendants have also filed counter-claim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counter-claim is allowed, as the

plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers. Therefore, non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs."

8. Admittedly, the petitioner/plaintiff is not claiming any relief against respondent Nos.1 and 2. Respondent Nos.1 and 2 may be legal heirs of deceased Narayanrao, however, it is the specific case of the petitioner/plaintiff that defendant Nos.1 and 2 (respondent Nos.3 and 4 herein) are causing obstruction, and he has sought recovery of possession from defendant Nos.1 and 2. In that view of the matter, the petitioner is taking a risk obtaining a decree only against defendant Nos.1 and 2/respondent Nos.3 and 4. He, therefore, cannot be compelled to add respondent Nos.1 and 2 in the present matter as he is not claiming any relief any relief against them.

9. For the aforesaid reasons, the impugned order is unsustainable in law and facts of the case, and deserves to be quashed and set aside.

10. In the result, the writ petition is allowed.

11. Impugned order dated 13/12/2022 passed by learned Joint Civil Judge, Junior Division, Degloor, below Exhibit-153 in Regular Civil Suit No.146 of 2008 is hereby quashed and set aside.

12. It is made clear that respondent Nos.1 and 2 will be at liberty to file appropriate proceeding as permissible in law.

13. Considering the fact that the Suit is of the year 2008, hearing of the suit is expedited.

14. Parties to co-operate.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane