

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9087 OF 2023

Prashant S/o. Omprakash Chalikwar Petitioner

Versus

Omprakash S/o Gangadhar Chalikwar
and others Respondents

.....
Mr. B.N. Palve, Advocate for the Petitioner

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th JULY, 2023

ORDER :

1. Order passed by the learned Joint Civil Judge, Junior Division, Nanded, below Exhibit-52, thereby allowing the application filed by the respondents/original defendant Nos.2 and 3 for their transposition as plaintiffs from defendant Nos.2 and 3 is challenged by the petitioner/original defendant No.1 in the present petition.

2. Heard the learned advocate for the petitioner. Perused the writ petition memo, annexures thereto, and the impugned order.

3. In application Exhibit-52 filed by defendant Nos.2 and 3, they have contended that as per the pleadings of the plaintiff, who is father of the defendants including the petitioner/defendant No.1, the defendant No.1 is causing disturbance in the possession of two rooms and it is necessary to access bathroom, latrine, etc., but considering the status of defendants, they cannot claim counter relief against defendant No.1 as per the provisions of Order VIII Rule 6(A) of the Code of Civil Procedure. As defendant No.1 Prashant is disturbing the possession of defendant Nos. 2 and 3 as well as respondent No.1/plaintiff, therefore, defendant Nos. 2 and 3 intend to claim injunction against defendant No.1 as was claimed by the plaintiff and was granted to him. They therefore prayed for their transposition as plaintiffs from defendants.

4. The Trial Court has allowed the application so as to avoid multiplicity of proceedings and in the interest of justice.

5. Learned advocate for the petitioner assailed the impugned order stating that the Appellate Court has already expedited the suit. By filing various applications, the trial is being prolonged on one or other pretext. Defendant Nos.2 and 3 cannot claim to be transposed as plaintiffs in the facts of the

present case. The impugned order shows non application of mind on the part of the Trial Court.

6. Considering the facts on record, it cannot be said that the Trial Court has committed an error in passing the impugned order. No prejudice is likely to be caused to the petitioner if defendant Nos.2 and 3 are transposed as plaintiff Nos.2 and 3. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane