

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6756 OF 2023

1. Lakhansingh Bholasingh Khalsa	
2. Satnamsingh Harisingh Pujari	Petitioners
	[Orig. Plaintiffs]

Versus

Sambhaji Mahavrao Shembole	Respondent
	[Orig. Defendant]

Mr. R.A. Tambe, Advocate for the petitioners.
Mr. V.S. Patil (Khairnar), Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Senior Division, Nanded, below Exhibit-40. in Regular Civil Suit No. 202/2016, thereby rejecting the application filed by the petitioners under Order 1 Rule 10 and Order 6 Rule 17 of the Code of Civil Procedure.

2. Petitioners/plaintiffs filed suit for perpetual injunction thereby seeking to restrain the defendant from interfering in the peaceful possession of the plaintiffs over the property Plot No. 59, Survey No. 78/C/A, situated at Nanded, Taluka & District-Nanded. In the suit, respondent/defendant appeared and filed

written statement opposing the suit. A specific averment is made that son of the defendant namely Pramod Shembole is a member of Nandigram Co-op. Housing Society Ltd., District- Nanded and he is owner and possessor of suit Plot No. 59, admeasuring 2400 Sq.Ft., situated at Survey No. 78/C (C.T.S. No. 10768) of Nandigram Co-operative Housing Society, Ltd., District- Nanded.

3. A public notice is issued by proposed purchaser of the suit Plot No. 59. Petitioners, when came across the said public notice, filed application Exhibit-40 for addition of Pramod Shembole as defendant No. 2 and sought to amend the plaint contending that defendant is intending to dispose of the suit property with intention to create multiplicity of litigation. Said application was opposed by respondent/defendant. Trial Court rejected the application. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the memo of writ petition, annexures and the impugned order.

5. Learned advocate for the petitioners assailed the impugned order contending that in spite of their being a public notice and ignoring the averments made in the written

statement that proposed defendant No. 2 is owner of the suit property, Trial Court has erroneously rejected the application. In support of his submissions, he has relied on documents annexed with the petition.

6. Per contra, learned advocate for the respondent vehemently opposed the petition contending that the suit property and the property which is being sold by way of public notice are two different properties and therefore, Trial Court is right in rejecting the application filed by the petitioners. He submits that the petitioners have purchased the property which was not in existence and on the basis of proposal of the Collector dated 02.04.1975, the Government by order dated 10.04.2017 cancelled both the survey numbers/gat numbers i.e 78/C/A and 78C by mutation entry no. 3199.

7. In the written statement filed by the respondent, there is specific averment made by the respondent that, "on 08.02.2016, plaintiffs have got executed illegal sale deed from Smt. Devkibai W/o Dayalsingh Thakur and Omsing S/o Dayalsingh Thakur, who are not owner and possessor of Plot No. 59 admeasuring 2400 Sq.Ft., situated at Survey No. 78/C, Nandigram Co-operative Housing Society, Ltd. District- Nanded,

as well as their names are not in any revenue record.”

8. A specific averment is made in para 12 of the written statement that, “the son of the defendant namely Pramod Sambhajirao Shembole is a member of Nandigram Co-op. Housing Society Ltd., Dist. Nanded and he is the owner and possessor of suit Plot No. 59 admeasuring 2400 Sq.Ft., situated at Survey No. 78/C (C.T.S. No. 10768) of Nandigram Co-op. Housing Society Ltd., Dist. Nanded.”

9. The boundaries of the suit property mentioned by the plaintiffs match with the boundaries of Plot No. 59 claimed to be owned by son of the respondent.

10. Trial Court while rejecting the application observed that defendant in his written statement filed in the year 2019 has stated that proposed defendant No. 2 is owner and possessor of the suit plot. But at that time, petitioners failed to make prayer for addition of proposed defendant. It is further observed that thus, “it is clear that there is no obstruction to the plaintiffs’ possession by the proposed defendant.” Trial Court has further proceeded to observed that “*plaintiffs have not specifically pleaded that present defendant is intending to*

dispose of the suit property but as per contention of the plaintiffs the proposed defendant is intending to alienate the suit property. The documents produced by the defendant prima facie show that plot No. 59 is allotted to Shri. Pramod Sambhaji Shembole on the basis of succession." After these observations, Trial Court has proceeded to hold that if defendant is not owner of the suit property, then there is no question of alienation by the present defendant. Hence, the Trial Court has rejected the application.

11. Reasoning adopted by the Trial Court while rejecting the application is erroneous and contrary to the record. Trial Court has failed to appreciate averments of the respondent in the written statement and the documents placed on record by both the parties. Rejection of application may lead to multiplicity of proceedings. In this view of the matter, the impugned order cannot be sustained. In the result, following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 21.04.2023, passed by learned Civil Judge, Senior Division, Nanded, below Exhibit-40, in Regular Civil Suit No. 202/2016, is hereby quashed and set aside.

- (III) Application Exhibit-40 is allowed, subject to the petitioners paying cost of Rs. 15,000/- to the defendant in the Trial Court.
- (IV) Respondent/Defendant and the proposed defendant who will be added, are entitled to challenge the merit of the amended plaint and file written statement/additional written statement for opposing the amendment.
- (V) All the challenges of the defendant/s to the amendment are kept open.

[NITIN B. SURYAWANSHI, J.]