

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13550 OF 2021

Wasudeo Dnyanoba Dongare

...Petitioner

Versus

Chitra Chintaman Sathvdhar And Others

...Respondents

Mr. Amol Chalak a/w. Mr. Datta Madake, Advocate for the
petitioner.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned Joint Civil Judge, Junior Division, Kej, below Exhibit-15, in Regular Civil Suit No. 58/2021, thereby allowing the application filed by respondent/third party, under Order 1 Rule 10.

2. Petitioner/plaintiff filed suit for perpetual injunction against defendants. Respondents No. 1 to 3/original defendants appeared and opposed the suit by filing written statement. Respondent No. 4 filed application Exhibit-15, under Order 1 Rule 10, for adding her as party defendant in the suit contending that she has jointly purchased the portion of suit property along

with plaintiff and plaintiff has suppressed this fact. The petitioner in connivance with the revenue authorities did not allow her name to be appeared in the revenue record and with a view to grab her property, she is deliberately not made party in the suit. She therefore is a necessary party having direct interest in the suit property, and therefore, she be added as defendant in the suit. The petitioner resisted the said application by filing say stating that respondent No. 4 has already sold portion jointly purchased by her with the petitioner, in favour of third party namely Digambar Chate and Suresh Chate. The petitioner placed on record certified copy of sale deed executed by respondent No. 4 in favour of Digambar and Suresh. The Trial Court has allowed application Exhibit-15 and directed the petitioner to add her as party defendant. Hence, the present petition.

3. Heard the learned advocate for the petitioner. Perused the memo of writ petition, annexures thereto and the impugned order. Though, respondents No. 1 to 4 are duly served, they have not filed appearance.

4. Record indicates that the petitioner while opposing application Exhibit-15 has specifically averred that respondent No. 4 has sold her portion of property by registered sale deed

No. 720/2023 dated 04.03.2003 to Digambar Chate and Suresh Chate, resident of Tambva, Taluka- Kej, District- Beed. On the basis of said sale deed names of Digambar and Suresh are entered in the revenue record vide mutation entry no. 8446 on 06.05.2005. Accordingly, said property is numbered as Grampanchayat and Nagarpanchayat House No. 4125/2. Therefore, respondent No. 4 has no concern with the said property. Hence, she is not necessary party. The Trial Court has ignored this contention by observing that, only photocopy of sale deed is placed on record and not the certified copy.

5. Learned advocate for the petitioner makes a statement that in fact certified copy of the said sale deed was placed on record in the Trial Court. Apart from this, subsequent purchasers i.e. Digambar and Suresh have filed application Exhibit-26 in the suit seeking their impleadment as party defendants in the suit, contending that they have purchased said property from respondent No. 4.

6. From the aforesaid facts it is clear that respondent No. 4 has sold the said property in favour of Digambar and Suresh and therefore she has no concern with the said property. Filing of application seeking impleadment by Digambar and

Suresh confirms this position. The Trial Court has failed to appreciate the contention raised by the petitioner in proper perspective and has erroneously allowed the application filed by respondent No. 4 by giving untenable reasons. The impugned order therefore cannot be sustained.

7. Resultantly the writ petition is allowed. Impugned order dated 29.06.2021, passed by learned Joint Civil Judge, Junior Division, Kej, below Exhibit-15 in Regular Civil Suit No. 58/2021 is hereby quashed and set aside.

8. Application Exhibit-15 stands rejected. There shall be no order as to costs.

[NITIN B. SURYAWANSHI, J.]