



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 12990 OF 2023**

Kishor Tarachand Jagdev .. Petitioner

**Versus**

Zinga Dattu Badgujar  
Since deceased through His L.Rs.  
Gayabai Zinga Badgujar and others .. Respondents

Shri B. R. Kedar, Advocate for the Petitioner.  
Shri Anand P. Bhandari, Advocate for the Respondent No. 1(6).  
Shri S. M. Ganachari, A.G.P. for the Respondent No. 4.

**CORAM : SHAILESH P. BRAHME, J.**  
**DATE : 01ST DECEMBER, 2023.**

**FINAL ORDER :**

. Heard learned counsel for the petitioner and the learned counsel for the respondent No. 1(6) finally at the stage of admission.

2. This petition is directed against the order dated 22.08.2023 passed below Exhibit 541 by the learned Civil Judge Senior Division, Amalner in R.C.S. No. 88 of 2001 rejecting application U/O I Rule 10 of the Code of Civil Procedure (for short "C.P.C.").

3. The petitioner is intervenor in R.C.S. No. 88 of 2001. The respondent No. 1 is the original plaintiff who filed suit for declaration and injunction against the respondent Nos. 2 to 14. The subject matter is stated to be final Plot Nos. 119, 203 and

209 as well as land Sy. No. 819/1 to 819/3 all situated at Amalner, Dist. Jalgaon. The respondent No. 1 has claimed declaration of his ownership over final Plot Nos. 199, 203 and 209 and possession. In respect of other suit lands, the sale deeds and development deed are challenged by praying the relief of declaration and injunction.

4. It is the case of the petitioner that he is concerned with the suit land being decedent of Zipru Khushal Sandanshiv, who was the owner. It was Mahar Watan Service Inam Land of Zipru and re-granted to him after abolition of inferior service inam. The revenue record reflects the names of the predecessor of the petitioner. In the year 1970 a scheme for Amalner Town was sanctioned and the lands are distributed into final plots. The petitioner learnt that the respondent No. 1 is alienating the suit lands and creating third party interest. The parties to the suit have no right, title and interest in the suit lands.

5. It is submitted by the learned counsel for the petitioner that R.C.S. No. 21 of 2018 is filed by the petitioner for the relief of declaration and injunction pending before the competent authority. It is also disclosed that Writ Petition No. 10859 of 2022 is filed by the petitioner before the Division Bench claiming relief in respect of same subject matter. He submits that valuable rights of the petitioner are involved. It is further submitted that the respondent No. 1 is alienating part of the subject matter unauthorizely and creating complications. If the petitioner is not impleaded in the suit, it is difficult to prevent

multiplicity of the proceedings.

6. The learned counsel for the petitioner would submit that there are title documents in the form of certificate of tenure and title of final Plot Nos. 199, 203 and 209. He would submit that the petitioner's claim cannot be ignored. The learned counsel has expressed grave concern over the conduct of the respondent No. 1 for compromising the suit with different persons. The respondent No. 1 is likely to withdraw the suit. He would urge that the truth must be brought before Court. To buttress the submission that he is necessary and proper party reliance is placed on the judgment of the Supreme Court in the matter of Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya (Deceased) through Legal Representatives and others reported in (2017) 9 SCC 700.

7. The learned counsel for the caveator/respondent No. 1(6) Mr. Anand Bhandari has contested the submissions of the petitioner. He submits that the petitioner is already prosecuting R.C.S. No. 21 of 2018 and Writ Petition No. 10859 of 2022. He has effective remedy to agitate his grievance and to claim relief. Independently, the petitioner can assert his title and interest, but not in the present suit. The respondent No. 1 has been allotted suit land by lawful manner and has every right to deal with the suit lands. No fetters can be imposed against them, muchless at the instance of the petitioner. He would submit that the petitioner is neither necessary party, nor proper party and no relief is claimed against him.

8. The learned counsel would submit that as the parties were litigating since 2001 in R.C.S. No. 88 of 2001, they have arrived at settlement at different point of time. The compromise decrees are passed between plaintiff and different defendants. By way of application under Order I Rule 10 of the C. P. C. the petitioner intends to unsettle the compromise decrees and the proposed settlements.

9. He submits that after great efforts the suit in question is about to be withdrawn. He submits that there is suppression of material facts in the petition. It is not permissible to grant any relief to the petitioner in the suit instituted by the respondent No. 1. The learned counsel supports the findings recorded by the learned Judge, which according to him are plausible and passed on sound reasons.

10. I have considered rival submissions of the parties. The respondent No. 1 has filed R.C.S. No. 88 of 2001 for the declaration and injunction. The petitioner has also filed an independent suit bearing R.C.S. No. 21 of 2018 for declaration and injunction. Both the parties are asserting their claims in respect of the same subject matter. Besides that, the petitioner is prosecuting Writ Petition No. 10859 of 2022 before the Division Bench of this Court. His grievance is that while implementing town planning scheme the lands belonging to his predecessor were wrongly redistributed and converted into final plots. The petitioner has independent remedies available to

assert his right, title and interest. The learned Judge is justified in holding that he can file appropriate proceedings permissible in law to assert his independent right.

11. The respondent No. 1 has nothing to claim against the petitioner in the present suit. It is not a case that the respondent No. 1 or his predecessor in title acquired land directly from the predecessor of the petitioner. There appears to be implementation of the town planning scheme and the alienation at the instance of the predecessors of the petitioner in favour of different persons. These aspects can be gone into in a proceeding initiated by the petitioner or by further proceedings. I endorse the view that no prejudice would be caused to the petitioner for not impleading him in R.C.S. No. 88 of 2001.

12. The learned counsel for the petitioner has filed on record Exhibit – H certificate of tenure and title, confirmation deed and Exhibit – O the sale deed to show that the predecessors of the petitioner are the owners of the suit land and the petitioner is concerned with the suit land. The petitioner has independent cause of action if third party interest is created in the suit lands by way of confirmation deeds or sale deeds. The learned counsel for the petitioner is unable to satisfy why timely steps are not taken by way of securing interim orders or filing appropriate proceedings. The present suit is pending since 2001. The petitioner has attempted to intervene by application Exhibit 541 on 13.01.2023 when the suit is at the stage of conclusion. The learned counsel for the respondent No. 1(6) is right in contending

that the petitioner's intention is to unsettle the matters and to create the fetters in the claim of the parties to the suit. Such is not the intention of the Order I Rule 10 of the C. P. C.

13. I do not find any merit in the submissions of the learned counsel for the petitioner that to prevent the multiplicity of the complications his intervention is necessary. Even if the apprehension and the submissions of the petitioner are accepted for time being, no purpose would be served by impleading him in a suit filed by the respondent No. 1. If the parties to the suit have caused any prejudice to the right, title and interest of the petitioner, same can be questioned independently, but not in the present litigation. Just because the predecessor of the petitioner was original owner, does not mean that the petitioner is necessary and proper party.

14. The learned counsel for the petitioner has referred the paragraph No. 10 of the judgment of the Supreme Court in the matter of Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya (Deceased) through Legal Representatives and others (supra) to buttress that for avoiding multiplicity of the proceedings his application Exhibit 541 should have been allowed. The proposition laid down by the Supreme Court cannot be disputed and this Court has due respect for that. However, under given facts and circumstances, I am of the considered view that the petitioner is neither necessary party, nor proper party and no prejudice would be caused if his application is rejected.

15. For the reasons stated above, I am of the view that the learned Judge has rightly exercised the discretion and has arrived at a plausible conclusion. I do not find any case to interfere in the impugned order. The writ petition is dismissed. There shall be no order as to costs.

**[ SHAILESH P. BRAHME, J.]**

*bsb/Dec. 23*