

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3391 OF 2023

Chandrakant Balasaheb Sonwane ...Petitioner

Versus

Atul Dagdu Sonwane And Others ...Respondents

Mr. Vilas Sawant, Advocate for the petitioner.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th MARCH, 2023

ORDER :

1. Challenge in this petition is to the order passed by learned 3rd Joint Civil Judge, Junior Division, Kej (wrongly mentioned as Patoda in the impugned order), below Exhibit-33 in Regular Civil Suit No. 236/2018, thereby rejecting the application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure.

2. The plaintiffs have filed suit for declaration of ownership of Survey No. 58/4, admeasuring 75 Are and mandatory injunction of possession of encroached portion against defendants No. 1 to 7.

3. The plaintiffs have relied upon the measurement conducted by the Deputy Superintendent of Land Records, prior to the filing of the suit.

4. The petitioner being third party filed application under Order 1 Rule 10 for his addition as defendant in the suit which is rejected by the Trial Court. Hence, the present petition.

5. Heard the learned advocate for the petitioner. Perused the grounds raised in the writ petition, annexures and the impugned order.

6. It appears from the record that the petitioner has no concern with Gut No. 58/4. The plaintiffs have not claimed any relief against the present petitioner and it is a specific pleading of the plaintiffs that defendants No. 1 to 7 have encroached on the suit property. Considering the fact that the petitioner has no concern with the suit property and the plaintiffs being master of their suit have not claimed any relief against the petitioner, the Trial Court has rightly rejected the application filed by the petitioner. No fault can be found with the finding recorded by the Trial Court that the petitioner is not necessary or proper party

and his presence is not necessary for adjudication of the suit. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merit is dismissed.

7. The learned advocate for the petitioner submits that in the measurement map and report it has come that the present petitioner has encroached on some portion of the suit property. If this position comes on record during the course of evidence of City Survey Officer, the petitioner is at liberty to adopt appropriate legal proceeding.

[NITIN B. SURYAWANSHI, J.]