

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7518 OF 2022

Sidram Apparao Chavan.

...Petitioner.

Versus

Kishor Dhanraj Goyal and Others.

..Respondents.

Mr. Nilesh Wable for the petitioner.

Mr. Anvil S. Kalekar for respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Date : June 20, 2023.

P. C. :

1. The challenge in this petition is to the orders passed by the learned District Judge, Solapur below Exhibit-23, Exhibit-27 and Exhibit-31 in Regular Civil Appeal No.213 of 2018. By the application at Exhibit-23, the petitioner sought to add the National Highway Authority as a necessary party to the suit. By the application at Exhibit-27, the amendment to the written statement was sought at the appellate stage and by the application at Exhibit-31, the petitioner sought for production of documents. All these three applications came to be dismissed by the appellate Court.

2. Heard Mr. Nilesh Wable, learned counsel appearing for the petitioner and Mr. Anvil S. Kalekar, learned counsel appearing for respondent No.1.

3. Learned counsel for the petitioner submits that the suit in question, i.e., RCS No.389 of 2015 was instituted by the respondent seeking an injunction against the petitioner from interfering with and obstructing the right of respondent or his tenants on the space towards the southern side of the suit properties, in front of iron gate till Pune-Solapur National Highway. He submits that this open space, which is between the iron gate and Pune-Solapur National Highway admeasuring 4-R, was initially acquired by the National Highway Authority, however, subsequently as excess area came to be acquired, it was returned back to the petitioner. He would urge that as the ownership of property is disputed inasmuch as the respondent in the suit has claimed that 4-R land has been acquired by the National Highway Authority, the impleadment of the National Highway Authority is required. He would further submit that similarly the amendment as proposed is necessary for the effective adjudication of the controversy in issue. As regards the production of documents, he submits that the provisions of Order-41 Rule-27 of the Code of Civil Procedure, 1908 permit the production of documents and leading of

evidence at the appellate stage.

4. Learned counsel appearing for respondent No.1 opposes the petition and submits that the suit being RCS No.389 of 2015 was a suit for an injunction simplicitor and as there was no declaration sought in respect of the open space admeasuring 4-R land, there is no necessity of joining the National Highway Authority. He would further submit that the application of amendment seeks to amend the written statement to raise an objection on the ground of non-joinder of National Highway Authority as a necessary party and also by way of the proposed amendment questions the erection of a shed claimed to have been erected by the respondent on the open space. He would further contend that the application for production of documents does not satisfy the requirements of Order-41 Rule 27 of the CPC and as such the appellate Court has rightly dismissed the application.

5. Considered the rival submissions of the parties.

6. After a decree has been suffered by the petitioner restraining the petitioner from obstructing the right of user of the respondent over an open space admeasuring 4-R, which according to the respondent was his access road to reach Pune- Solapur Highway, the

present applications have come to be filed at the appellate stage.

7. RCS No.389 of 2015 was filed by the respondent against the petitioner simplicitor for an injunction claiming a right of usage of way. It is not disputed that there is no declaration of ownership which is sought in respect of 4-R land and only in support of his right to injunction, it is claimed in the plaint by the respondent that the open space admeasuring 4-R land is owned by the National Highway Authority. For the purpose of impleading a person, the issue has to be tested on the touchstone of Order-1 Rule-10 of CPC which provides that it is only a necessary or proper party which is required to be impleaded. A necessary party is one in whose absence decree cannot be effectively passed and a proper party is a party whose presence is required to effectively adjudicate the proceedings and in whose absence a decree can be passed but his presence is required for the effective adjudication.

8. In the present case, considering the suit was for injunction, the presence of National Highway Authority was not required and as such the National Highway Authority was neither a necessary party nor a proper party. The suit being simplicitor for injunction, all that respondent was required to prove is his right of user, and the

ownership of open space admeasuring 4-R does not make any difference..

9. As regards the proposed amendment to the written statement, the same proceeds on the basis that the National Highway Authority being necessary party, the suit must fail for non-joinder of necessary party. As observed earlier, the National Highway Authority is not a necessary party, the proposed amendment is not required at the appellate stage. Further by the application for amending the written statement, the respondent seeks to question the erection of a shed on the property. It is well-settled that all amendments are allowed which are necessary for the effective adjudication of the controversy in dispute. In the present case, the suit being a suit for injunction and the only question which is required to be adjudicated was the right of user of road of the respondent over the open space of land, the construction, if any, erected by the respondent would be of no consequence and, as such, the proposed amendment would have expanded the scope of proceedings which is impermissible.

10. As regards the application seeking production of documents, perusal of the application, which is annexed at page 58-A of petition indicates that the said application merely seeks the production of

documents without complying with the provisions of Order-41, Rule-27 of CPC which reads thus :

“27 . Production of additional evidence in Appellate Court-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if ---

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

11. As the application in question does not satisfy the requirements of Order-41, Rule-27 of CPC, the application has been rightly dismissed by the appellate Court.

12. In the light of above, the petitioner has failed to make out any cause for interference in the impugned order. Writ petition stands dismissed.

[Sharmila U. Deshmukh, J.]