

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3011 OF 2020

Sadanand Vishwanath Bendkhale ... Petitioner

V/s.

Nagar Panchayat, Lanja
through Chief Officer, & Anr. ... Respondents

Mr. Sanskar Marathe for the petitioner.

Mr. Aniket P. Ranade for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2023

P.C.:

1. The challenge in this writ petition under Article 227 of the Constitution of India, the petitioner/original plaintiff is challenging order passed by the Trial Court exercising power under Order 1 Rule 10 of the Code of Civil Procedure, 1908 allowing such application.

2. The petitioner is original plaintiff who filed Regular Civil Suit No.47 of 2016 seeking relief of injunction not to disturb his possession over the suit property against defendant/Gram Panchayat. Pending said suit, respondent No.2 claiming to be a licensee of respondent No.1 filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to implead him as defendant in the suit, as according to respondent No.2, without his presence the suit cannot be effectually and completely adjudicated.

3. The Trial Court allowed the objection holding that the applicant claims adverse right of license over the suit shop and, therefore, he is property party to the suit.

4. Having heard learned advocates for the parties and having considered the reliefs claimed in the suit, in my opinion, the suit is essentially a dispute between the plaintiff and defendant/Gram Panchayat. The reliefs claimed in the suit is injunction restraining Gram Panchayat from disturbing possession of the plaintiff over the suit property. In such a suit, the person who claims to be in possession is not entitled to intervene as it is for the plaintiff to prove that whether he is in possession of the suit property, or not. Since the suit is for injunction, any decree passed in such suit shall not bind any other person than the defendant in the suit. Therefore, in my opinion, the petitioner being *dominus litis* chooses to add those parties who according to him are necessary for effectual adjudication of the suit. Hence, following order:

a) Impugned order dated 26 October 2016 passed by Civil Judge Junior Division, Lanja, District Ratnagiri below Exhibit 29 in Regular Civil Suit No.47 of 2016 is quashed and set aside;

b) It is made clear that the decree passed in Regular Civil Suit No.47 of 2016 shall not bind respondent No.2 and continuation of suit by the plaintiff shall be at his own risk.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)