

VRJ

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

WRIT PETITION NO.6498 OF 2022

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Farrokh Framji Wadia & Ors.

... Petitioners

V/s.

Prabhakar Vishnu Bharate & Ors.

... Respondents

Mr. Sanjeev Gorwadkar, Senior Advocate i/by Mr. Prasad B. Kulkarni and Mr. Mohan Rao for the petitioners.

Mr. Ravi P. Kadam for respondent No.22.

Mr. Chaitanya B. Nikte with Mr. Ritvij Kale with Mr. Hitanshu Jain and Mr. Prajit Sahane for respondent No.23.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 1, 2023

P.C.:

1. The petitioners are original plaintiffs who filed a suit for declaration of ownership over the suit property and injunction restraining the defendants from disturbing plaintiffs' possession over the suit property.

2. During pendency of the said suit, the third party i.e. respondent No.23 filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 seeking direction against the plaintiffs to add him as defendant in the suit property. According to defendant No.23, he is in possession of the suit property and the existing defendants and the plaintiffs are pursuing the suit in

collusion. According to defendant No.23, order passed in the suit shall prejudicially affect his legal rights.

3. The Trial Court based on documents produced by defendant No.23 allowed the application holding that the issue involved in the suit is to adjudicate who is in possession. Therefore, presence of third party is necessary for effective and complete adjudication of the suit property.

4. It is well settled principle of law that relief of injunction not to disturb plaintiffs' possession over the suit property is personal relief. Such relief operates only against the persons who are party to the suit. The relief of declaration would also bind the defendants in the suit. The Civil Court while exercising powers for enforcement of rights under the Specific Relief Act, 1963 is not acting as Court in rem. As it is well settled that only the Court issuing probate, admiralty and insolvency while exercising their respective statutory powers deliver judgments which operate as judgment in rem.

5. The suit for declaration and injunction requires the Civil Court to adjudicate lis between the parties to the suit. Therefore, presence of any other person claiming to be in possession is not necessary for complete and effectual adjudication of such suit. The decree passed in such a suit obviously need not bind any other person than the parties to the suit. Therefore, the Trial Court was not justified in thrusting respondent No.23 on the plaintiffs. The plaintiffs being dominus litis it is his discretion against whom he wants to institute or proceed with the suit. Therefore, the

impugned order passed by the Trial Court cannot be sustained.

6. Hence, following order:

a) The impugned order dated 8th September 2021 passed by 19th Joint Civil Judge, Junior Division, Pune in R.C.S. No.757 of 2008 is quashed and set aside.

b) The application below Exhibit-177 in R.C.S. No.757 of 2008 is rejected.

7. The writ petition stands disposed of. No costs.

8. It is made clear that the observations made in the present order shall not affect rights of third parties either to institute proceeding or to claim any other right independent of the suit.

(AMIT BORKAR, J.)