

VRJ

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

WRIT PETITION NO.315 OF 2022

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RAMESH
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VAIBHAV RAMESH
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Mohan Raghunath Jadhav & Ors. ... Petitioners

V/s.

Chief Officer Satara Municipal Council
& Ors. ... Respondents

Mr. Sandip Ghogare with Mr. Suraj Ghogare i/by Mr.
Sandip Ghogare for the petitioners.

Mr. Prabhanjan B. Gujar for respondent No.1.

Mr. Vishwanath Talkute for respondent Nos.3 to 25.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 11, 2023

P.C.:

1. The petitioners are original plaintiffs who are challenging order passed by the Trial Court allowing an application for third party under Order 1 Rule 10 of the Civil Procedure Code, 1908.

2. The petitioners are original plaintiffs who filed Regular Civil Suit No.126 of 2020 seeking a declaration that property described in paragraph 1 be declared as property owned by the plaintiffs. Further relief of injunction restraining the defendants from disturbing the plaintiffs' possession over the suit property is sought. According to the petitioners, the suit property is their ancestral property. In the year 1994 the Collector sanctioned layout in relation to the suit property. According to the plaintiffs in

the said layout, part of the property was shown for the purpose of road; however, the State Government by order dated 8th January 2018 canceled the said circular notifying part of the suit property as road. According to the petitioners, without giving opportunity to the petitioners mutation entry in their favour was canceled. They have carried out construction over the suit property and the defendants are, therefore, disturbing plaintiffs' possession over the suit property.

3. In the said suit, the respondents filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908. The Trial Court, by the impugned order, allowed the application holding that the petitioners are proper party to the suit as the suit property was a public road and the plaintiffs illegally constructed compound over the said road and the Gram Panchayat called upon the plaintiffs to remove the said construction. It is observed that the third party applicants have purchased property adjoining the suit property and the road which leads to third party applicants' property passes through suit property, therefore, they are proper party to the suit.

4. It is well settled position of law as regards impleadment of parties to the suit that the plaintiff being *dominus litis* may choose persons against whom he wishes to litigate and the plaintiff cannot be compelled to sue a person against whom he does not seek any relief. However, this general rule is subject to provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 which permits the Court either on an application or on its own motion to issue direction to the plaintiff to implead proper or necessary party

whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon the issues involved in the suit.

5. It is also well settled that necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the Court. A proper party is a person whose presence would enable the Court to completely and effectually adjudicate the issues involved in the suit.

6. In the facts of the case, the enforceable right pleaded by the third parties is that their right of way which leads to their residence passes through suit property. To adjudicate whether the third parties are necessary parties to the suit, it is obligatory to consider that the relief as prayed by the plaintiffs can be granted without impleading third parties or not. In the context of right claimed by the third parties namely right of way over the property, the relief of ownership sought by the plaintiffs does not prejudicially affect the rights of the third parties as such declaration will not bind third parties. Third parties are not claiming ownership rights over the suit property. In so far prayer clause (b) in the suit is concerned, the relief of injunction as prayed is personal in nature, therefore any relief granted in this suit shall not affect third parties' rights as such injunction shall be binding only on the defendants who are made parties to the suit.

7. The Trial Court recorded a finding that right of way conferred on the third parties shall be affected in the suit allowed the application holding third parties to be proper parties. In my

opinion, if there is any infringement of rights as alleged by the defendants such as right of way, the respondents shall have independent right to ventilate their grievance by adopting proceedings as are permissible in law. In a suit filed by the petitioners, the petitioners being dominus litis and considering the relief of injunction sought against the defendants and such relief being personal to the defendants, it will not affect rights of third parties as such decree of injunction shall not bind third parties. As held earlier the relief of declaration of ownership has no effect of taking away right of way of the third parties as they are not claiming ownership over the suit property.

8. Learned advocate for the respondents invited my attention to the judgment passed by this Court in Civil Writ Petition No.364 of 2023. The writ petition arose out of suit filed by a plaintiff. This Court refused to grant relief to the plaintiff on the ground that the construction carried out by the plaintiff was unauthorized construction. Such finding recorded in paragraphs 6, 7 and 8 in Civil Writ Petition No.364 of 2023 indicates that construction in the said suit carried out by the plaintiff was unauthorized but such finding shall not create enforceable right in respondents' favour to file an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 unless the Court feels such parties to be necessary parties to the suit.

9. In so far as the judgment relied upon by the respondents in the case of **Chandrakant Dharma Bhonu vs. Pandurang Ramchandra Dandekar** reported in 2004 (2) Mh.L.J. 782 is concerned, the judgment arose out of suit in relation to

unauthorized construction by adjoining owner. In case of unauthorized construction, the law is well settled that any person in the said locality has right to seek demolition of unauthorized construction as such construction is contrary to the Development Control Rules. However, in the facts of the case, the nature of right claimed by the third parties is limited to infringement of right of way, the third parties shall have remedies available in law but filing of application for adding party to a suit filed by the petitioners is not a remedy which is permissible in law..

10. In a recent judgment in the case of **Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others** reported in (2020) 13 SCC 773, the Apex Court reiterated the legal principles that plaintiff being dominus litis, has a discretion to add party to the suit. If the petitioner takes a risk of not adding affected parties, such decree shall not bind the persons who are not made parties to the suit. Therefore, in my opinion, the Trial Court was not justified in allowing application for adding respondents as necessary party to the suit.

11. Hence, following order:

a) The impugned order dated 7th September 2021 passed below Exhibit-66 in Regular Civil Suit No.126 of 2020 is quashed and set aside.

b) It is made clear that any order or decree passed in Regular Civil Suit No. 126 of 2020 shall not bind third parties' rights. It is further made clear that it will be open for the third parties to enforce alleged right of way by adopting

appropriate proceedings as are permissible in law.

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

(AMIT BORKAR, J.)