

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

WRIT PETITION NO. 2682 OF 2020

Vimal Bhagwan Pagare & Ors. ...Petitioners

Versus

Prashant Pannalalji Karnawat & Ors. ...Respondents.

**WITH
WRIT PETITION NO. 2622 OF 2020**

Daulat Khandu Nimbalkar & Ors. ...Petitioners

Versus

Prashant Pannalalji Karnawat & Ors. ...Respondents.

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Mr. Amey Deshpande for the Petitioners in both petitions.
None for Respondents.

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CORAM: SANDEEP V. MARNE, J.

DATE : 08 AUGUST 2023.

P. C.:

1. By these petitions, Petitioners challenge the orders dated 26 April 2019 passed by 4th Jt. Civil Judge, Senior Division, Nasik allowing the application for impleadment of Respondent No.1 as part defendant

under Order I, Rule 10 of the Code of Civil Procedure. Similar Order is passed in application filed in Regular Civil Suit No. 557 of 2016.

2. Facts in both petitions are identical. Therefore, facts in Writ Petition No. 2682 of 2022 are considered. Petitioner-Plaintiffs have instituted Regular Civil Suit No.520 of 2016 and 557 of 2016 against Nasik Municipal Corporation challenging the notice dated 23 June 2016 issued by the Municipal Corporation for demolition of construction over the suit property. In the suit, Plaintiffs impleaded Smt. Hirabai Krushna Badade as defendant No.1 describing her to be the owner of the suit property. It was contended in the plaint that Respondent No.1 was a protected tenant in respect of the suit property and in accordance with the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, she was entitled to use and occupy the same. It was further pleaded that in accordance with the rights acquired by her under the provisions of the said Act, she executed lease deed in favour of same of the Plaintiffs for a period of 99 years. That Plaintiffs have constructed houses on the suit property which are sought to be demolished by the Municipal Corporation.

3. Respondent No.1 filed application for impleadment as party defendant to the suit under the provisions of Order I, Rule 10 of the Code of Civil Procedure contending that his name appears in the record of rights of the suit property. That name of Smt. Hirabai Krushna Badade as tenant of the suit property was removed as per Court order and she does not have any right, title or interest in the suit property. Since

Respondent No.1 claims to be owner of the suit property, he apprehended his interest would be affected on account of any orders passed in the suit. He therefore sought his impleadment to the suit.

4. Application was resisted by the Petitioners by filing their reply. The Trial Court has proceeded to allow the application by order dated 27 June 2019, which is the subject matter of challenge in the present petition.

5. Appearing for the Petitioner, Mr. Deshpande the learned counsel would submit that Respondent No.1 cannot seek impleadment in suit challenging notice issued by Municipal Corporation. That the Petitioners did not seek any relief against Respondent No.1 and therefore there is no necessity of impleadment of Respondent No.1 to the suit.

6. Mr. Deshpande would further submit that the issue involved in the present petition is squarely covered by the judgment of the Apex Court in **Mohmed Hussain Gulam Ali Shariffi Vs. Municipal Corporation, Greater Bombay & Ors.**, (2020) 14, SCC 392.

7. I have considered the submissions canvassed by the learned counsel for the Petitioner. The suit is filed challenging the Notice dated 22 June 2016 issued by the Nasik Municipal Corporation. Prayer for injunction is also included in the plaint to restrain defendants from disturbing Plaintiff's possession of the suit property.

8. In his application for impleadment, Respondent No.1 specifically pleaded that he is the owner of the suit property bearing

Survey No.314/1. Though Petitioners described Smt. Hirabai Krushna Badade as tenant of the suit property, Respondent No.1 contended in his application that her name was long since removed from record of rights of the suit property and she does not have any right or title in the suit property.

9. In the reply, Plaintiffs did not dispute ownership of suit property by Respondent No.1. On the contrary, they contended that Plaintiffs came in possession of the suit property before Respondent No.1 become owner thereof. From the reply filed by the Petitioners it appears that ownership of the suit property by Respondent No.1 is not seriously disputed. The Trial Court has held that since ownership of suit property by Respondent is undisputed, Respondent No.1 deserves to be impleaded as party to the suit.

10. Also, suit of the Plaintiffs' is premised on an assertion that the suit property is a slum and that therefore, their structures deserve to be protected. Petitioners do not dispute assertion of Respondent No. 1 that his name is reflected on 7/12 extract of the suit property as owner thereof. If that is the case, there is no explanation on the part of Petitioners as to how declaration as to the suit property being a slum could be sought in absence of impleadment of Respondent No. 1 as party defendant. In the Suit, the Trial Court is likely to decide whether the suit property is a slum. If declaration to that effect is made in the Suit, the same would undoubtedly affect rights of Respondent No. 1.

11. True it is that Plaintiff being *dominus litis* of his Suit cannot be forced to seek relief against undesirable persons. It is his choice to decide whom to sue. The persons who are omitted from Suit will not be bound by decree passed therein. However the principle of 'Plaintiff being *dominus litis* of his Suit' cannot be overstretched to such an extent that Courts pass ineffective decrees against persons who have no interest in suit property by turning its doors on rightful owners of suit property. The Courts would also examine whether the Suit is cleverly drafted in such a way that decree is sought against uninterested persons for its enforcement against rightful owners and omission to sue right a defendant is deliberate. In a case like present one, Plaintiff are seeking decision of issue as to whether the suit property is a slum by deliberately omitting Respondent No. 1 from array of parties, whose name appears in the 7/12 extract as owner thereof. In this regard, useful reference can be made to the Judgment of this Court, Bench at Aurangabad (delivered by me) in ***Ashok Babarao Patil Vs. State of Maharashtra***, Writ Petition No. 10493 of 2022 decided on 11th October 2022, in which it is held as under:

19. The provisions of Order I Rule 10(2) of the Code are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the court may, at any stage of the proceedings order that the name of any party, who ought to have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

20. The theory of dominus litis cannot be overstretched in the matter of impleading of parties, which results in ineffective decrees being passed in absence of necessary parties or where the theory is misused to

deliberately obtain decree against non- interested persons/officials and then use it to assert rights of Plaintiff. It is also for the Court to ensure that the real matter in dispute is effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party's presence is necessary before the Court for adjudicating upon the issue involved in the suit, the Court has full power under Order I Rule 10(2) of the Code to direct addition of such party to the suit.

12. The issue involved in the present Petition are somewhat similar to ***Nimesh J. Patel vs. Municipal Corporation of Greater Mumbai & Anr.***, 2021 SCC OnLine Bom 6588 decided by this Court. In that case, Petitioners therein claimed themselves to be owners of the property on which the Plaintiffs had constructed some illegal/unauthorized structure. Petitioners therein therefore complained to the Municipal Corporation and requested for demolition of illegal/unauthorized structures. Acting on complaints filed by the Petitioners therein, the Municipal Corporation issued notices under section 55 of the Maharashtra Regional and Town Planning Act, 1966 to the Plaintiffs. Plaintiffs filed suit challenging the notice. In that suit Petitioners therein, in their capacity as owners of the property, sought impleadment. The Application for impleadment was rejected by the Trial Court and the matter was carried before this Court. This Court in paras 29, 30 and 31 ***Nimesh J. Patel*** (supra) held as under:

“29. The bone of contention between the parties being whether the owner of the suit property was a necessary party

in the suit filed by a trespasser/tenant being aggrieved by the notices received by him from the Corporation. The question will have to be determined in the backdrop of the provisions revolving around the impleadment of a necessary or proper party to the suit.

30. The said issue is no more *res integra* and the authoritative pronouncement of the Apex Court as well as this court, time and again have settled the law to the effect, where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is claimed, against him, he is a proper party. The necessity to join the parties to a suit would definitely depend upon the relief that has been claimed. Under sub-Rule (2) of Rule 10 of Order 1 of the CPC, a person, whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate and settle all the questions involved in the suit, will be necessary party and he shall be added in the proceedings.

31. In the wake of the aforesaid, the main consideration seems to be whether or not the presence of the petitioner is necessary to enable the court to effectually and completely adjudicate upon and settle the question involved in the suit. A party may be eventually affected by the final outcome of the decision of the court and he shall then become a necessary party. Referring to the decision of the Apex Court in the case of *Aliji Momonji & Co. (supra)*, the terminology invoked is "having interest in the property". The Apex Court, in a dispute between the Municipal Corporation and the lessees, revolving around demolition of a portion of the building on account of unauthorized construction has held that the landlord seeking his impleadment under Rule 10 of Order 1 of the CPC on the ground of having interest in the property as in the event of demolition of building, his right, title and interest would be directly affected and, therefore, he was a proper party though no relief is sought against him. This decision has been followed by the Bombay High Court in the cases of *Dunhill Come Co-op, Hag. Soc, Ltd.* and *Arun R. Singh (supra)*."

13. The learned counsel appearing for the Petitioners has placed reliance on the judgment of the Apex Court in *Mohmed Hussain Gulam Ali Shariffi* (supra). However, the facts in the case before the Apex Court were entirely different. Though the intervener claimed ownership rights in respect of suit property in case before the Apex Court, but such rights were in dispute. It appears that the intervener had filed a separate suit seeking specific performance of agreement in his favour relating to suit property in which he was tenant. Thus, there was serious dispute as to whether intervener was the owner of the suit property or not. In the present case, the Petitioners have not disputed or denied ownership of suit property by Respondent No.1. Therefore, the judgment in *Mohmed Hussain Gulam Ali Shariffi* will have no application to the facts and circumstances of the present case.

14. I therefore do not find any error in the impugned orders passed by the Trial Court. Writ Petitions being devoid of merits, are dismissed without any order as to costs.

SANDEEP V. MARNE, J.

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