

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7038 OF 2022

Mohanlal Ramlal Sahu,
Aged 74 years, Occ.: Nil,
R/o. Masanganj, Amravati,
Tq. & Dist. Amravati.

.... **PETITIONER.**

// VERSUS //

1. Sau. Aruna Mukesh Sahu,
Aged 38 years, Occ. : Business,
R/o. Santoshi Nagar, Amravati,
Tq. & Dist. Amravati.
2. Sumit Gopal Sahu,
Aged 30 years, Occ. Business,
R/o. Ward No.15, Nagjhiri Ward,
Near Kadariya School, Burhanpur
(M.P.)

.... **RESPONDENTS.**

Shri S.S.Alaspurkar, Advocate for Petitioner.
None for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 21, 2023.

ORAL JUDGMENT :

1. Heard learned counsel for the petitioner. None for the respondents, though served long back.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. In this writ petition, the order below Exh.49 dated 21/07/2022 passed by learned Civil Judge Junior Division, Amravati allowing the application Exh.49 filed under Order I Rule 10 of the Code of Civil Procedure is under challenge.

4. The petitioner is a plaintiff who filed suit for ejectment and possession against the respondent No.1 who is a niece of the plaintiff, with a prayer to pass decree for ejectment and possession of the suit property described in paragraph No.1, thereby directing the defendant to vacate and deliver the suit property to the plaintiff. The respondent No.2 filed an application under Order I Rule 10 of the Code of Civil Procedure for joining him as party to the suit claiming that he is in possession of the suit property.

5. The petitioner has opposed the said application and pointed out that the respondent No.2 has filed a suit for specific performance against the petitioner and the application came to be filed in collusion with the respondent No.1. The learned trial Court, after hearing both the parties, allowed the said application vide order dated 21/07/2022, which is subject matter of the present petition.

6. Shri Alaspurkar, learned counsel for the petitioner submits that the petitioner being plaintiff and *Dominus Litis* has every right to make a person as party to the suit, who is necessary and proper party.

7. He submits that in a suit filed by the respondent No.2 for specific performance against the petitioner he has also prayed for possession, which shows that the reason for allowing the application under Order I Rule 10 of the Code of Civil Procedure, by the trial Court is erroneous. He, therefore, submits that to prolong and to delay the suit the application came to be filed and the respondent wanted to get him joined in the suit as defendant to create obstacle in the decision of the suit. He, therefore, submits that the impugned order needs to be quashed and set aside.

8. I have perused the record and the impugned order.

9. The only ground on which the application came to be allowed by the trial Court was that the respondent No.2 is claiming himself as possessor of the suit property being tenant which is admitted by the respondent No.1 and therefore, he is necessary party in the suit for possession. However, after going through the suit for specific performance filed by the respondent No.2 the prayer clause (1) shows that the respondent No.2 has prayed for possession of the suit property.

The prayer clause (1) reads thus:

“(1) decree of specific performance may be granted in favour of plaintiff and it be directed to defendant No.1 as a seller and defendant No.2 as a consenting party to the execution of sale deed after receiving outstanding amount Rs.12,00,000/- or if defendants denied to do so, sale deed be executed through the machinery of court. Also possession of suit property may be handed over to plaintiff if defendants denied it may be handed over through the machinery of court.”

10. In the circumstances, I am of the opinion that as the prayer clause of the respondent No.2 in his suit for specific performance falsifies his case that he is in possession of the suit property, the learned trial Court has committed error in allowing the application Exh.49. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The order dated 21/07/2022 passed below Exh.49 by 11th Joint Civil Judge Junior Division, Amravati in Regular Civil Suit No.382 of 2019 is hereby quashed and set aside.

The writ petition is **disposed of** accordingly. No order as to costs.

JUDGE

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