



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12064 OF 2024

Prakash Goturao Randhir

...Petitioner

Versus

Shrichand Therumal Katariya and Ors ...Respondents

...

Mr. A. N. Sabnis, Advocate for Petitioners

...

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 12, 2024

PER COURT :

1. This Petition takes exception to order dated 16.07.2024 passed below Exh. 17 in RCS No. 88/2023 rejecting application filed by the Petitioner/Intervenor to join himself as party Defendant to the suit.

2. Petitioner is the complainant on the basis of whose complaint a notice came to be issued by Dhule Municipal Corporation to Respondent No. 1 and 2/Original Plaintiffs in respect of construction on Survey No. 37, Plot No. 4. Plaintiffs challenged the said notice dated 16.02.2023 before the Civil Judge, Junior Division, Dhule by filing suit bearing RCS No.

88/2022. The Petitioner moved an application vide Exh. 17 seeking his impleadment in the suit as Defendant on the ground that he is the complainant and he is likely to be affected by the order passed therein. Learned Trial Court, after hearing both sides, rejecting application by passing impugned order. Hence, this Petition.

3. Learned Counsel for the Petitioner submits that since the notice dated 16.02.2023 has been issued by the Municipal Corporation against the original Plaintiffs on the complaint/at the instance of the present Petitioner, he is said to have been interested in the subject matter of the suit. It is his further submission that though in strict sense Petitioner may not be the necessary party, however, he is a proper party and hence, having regard to the provision of Order I, Rule 10 of CPC, the application for impleadment ought to have been allowed by the Trial Court. To support his submissions, he relied upon the judgment of this Court in case of Sudhir Shrinivas Joshi vs. Chief Officer and Another, Writ Petition No. 11201 of 2018. He made reference to the facts involved

in the said case to contend that in the similar set of facts the impleadment was allowed.

4. Perusal of the record indicates that the suit is filed by the Original Plaintiffs against Municipal Corporation taking exception to the notice dated 16.02.2023 issued against them in the plaint. There is no allegation/averment against the present which the Petitioner is required to be met by him on becoming a party to the said suit. In this backdrop, if the application Exh. 17 filed by the Petitioner before the Trial Court is considered, the same shows that in fact it is the case of the Petitioner that the right of the Petitioner is obstructed by the alleged construction carried out by the Plaintiffs and as such, the elementary right of way has been denied to the Petitioner. Though it is alleged that Plaintiffs have forged signatures of the Petitioner while obtaining permission for construction from Municipal Corporation, admittedly Petitioner has not filed any legal proceedings against Original Plaintiffs in this regard taking exception to the said document. The only question that would fall for determination in the present Petition is as to

whether the Petitioner is necessary or proper party as contemplated by Order I, Rule 10 of CPC.

5. At this stage, it would be relevant to take note of order I, Rule 10 CPC, which reads thus:

10. Suit in name of wrong plaintiff

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties-- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person 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.

(3) xxx

(4) xxx

(5) xxx

6. Perusal of above provision unequivocally shows that it is within the right of the Court to strike out or add party at any stage of the proceedings provides the person who ought to have been joined, whether Plaintiff or Defendant, his presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Thus, unless this requirement is satisfied, no person is entitled to be joined as party to the proceedings.

7. At this stage, it would be relevant to take note of the judgment of Hon'ble Supreme Court in case of Mumbai International Airport Pvt. Ltd vs. Regency Convention Centre and Hotels Pvt Ltd and Ors, (2010) 7 SCC 417, wherein in paragraph 12 it is held as under:

12. Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-

party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* MANU/SC/0502/1980 MANU/SC/0502/1980 : 1981 (1) SCC 80 reiterated the classic definition of 'discretion' by Lord Mansfield in *R. v. Wilkes* 1770 (98) ER 327 that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of

Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonafides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a

proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues

relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

8. The Hon'ble Supreme Court, in the above judgment, has taken into consideration various situations and held as to how provisions of Order I, Rule 10, CPC can be implemented in cases while deciding application for impleadment or deletion of any party to the suit or proceeding. The sum and substance of the said discussion is that unless a person is necessary or proper party, he cannot be impleaded to the proceedings.

9. Reverting back to the facts of the present case, the suit is filed for limited purpose of challenging notice issued by the Corporation to the Plaintiffs. The scope of this suit cannot be expanded beyond correctness/legality of notice impugned. It is not the case of the present Petitioner that he is

holding any documents which would justify the action of issuance of notice by the Corporation. The Corporation is a statutory body and on the basis of documents available with it the notice in question is issued and as such, it is only for the Corporation to justify its action before the Court of law. Merely because the Petitioner is complainant or at whose instance notice is issued, he does not become necessary or proper party as contemplated by Order I, Rule 10 CPC. There is no serious dispute about the fact that the Petitioner is not a necessary party, however, it is claimed that he is a proper party to the suit. In order to become a proper party, the presence of the Petitioner is must to effectually and completely adjudicate upon and settle the issues involved in the suit. In considered view of this Court this requirement is not satisfied by the Petitioner and as such, he can neither be called as necessary or proper party. Following the judgment of the Hon'ble Supreme Court (supra) once the person is neither necessary or proper party, he cannot be joined to any proceedings.

10. In view of above discussion, Petition stands dismissed. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)

Malani