



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

958 WRIT PETITION NO. 15362 OF 2023

Bhausahab Dada Bansode

....Petitioner

VERSUS

Gramvikas Adhikari Sakuri Grampanchayat

.....Respondent

.....

Mr. B. A. Husale, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.

DATE : 14th NOVEMBER, 2024.

PER COURT :

1. Heard.

2. None for the Respondent inspite of service of notice. In any case, the order impugned was passed in absence of the Respondent and hence, there is no impediment in entertaining the petition in the absence of Respondent herein.

3. Petitioner takes exception to the order dated 27.09.2023 passed by learned Civil Judge, Senior Division, Rahata whereby the application filed under Order 1 Rule 8 of Code of Civil Procedure for filing representative suit is rejected.

4. The Petitioner has filed suit before Civil Judge Senior Division, Rahata for seeking declaration that the suit property is a burial ground which is used by the Plaintiff and other residents since ages. It is his contention that he is the permanent resident of village Sakoli and there is 40 R land earmarked and used since prior to the independence for burial ground. It is his contention that in the information received under Right to Information Act, it is found that there is no entry in the revenue record in this regard. In such circumstances, the suit is filed for seeking declaration that the suit property is a public burial ground and that entry of the same needs to be taken in the record of rights.

5. Since the suit filed by Petitioner/Plaintiff was not for seeking any relief personally in his favour, he moved application before the Trial Court under Order 1 Rule 8 of Code of Civil Procedure claiming that the suit should be permitted to be filed in the representative capacity. However, the application is rejected. Hence, this petition.

6. Learned counsel for the Petitioner submits that the Trial Court has committed error by rejecting application on the ground

that the representative suits are allowed only if it is brought before the Court that it is case of the public nuisance. Second reason for rejecting the application is that there is no persons interested or beneficiaries shown by the Plaintiffs. Thus, it is his contention that the said findings are incorrect being not supported by law, can not sustain.

7. In order to appreciate the contentions, it would be relevant to take note of the provisions of Order 1 Rule 8 of Code of Civil Procedure, which read thus :-

8. One person may sue or defend on behalf of all in same interest.

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause,

such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

8. Perusal of this provision clearly shows that where there are numerous persons having same interest in one suit, one or more of such persons may with the permission of the Court sue or be sued or may defend such suit. Perusal of the draft plaint clearly indicates that the Petitioner/Plaintiff is seeking declaration that the suit property is the burial ground and therefore, seeks direction for making entry thereof in the record of rights. Pleadings indicate that the Plaintiff himself is not only interested in the subject matter of the suit but there are other persons i.e. residents of village also who have interest therein, it being in respect of burial ground. Thus, on the face of it, it can be said that the Petitioner and the other persons from said village have interest in the subject matter. In all cases, no particular names of the persons are required to be brought on record, but it is sufficient to demonstrate that number of other persons have interest in the subject matter of suit. Provision of Order 1 Rule 8 of Code of Civil Procedure is made essentially for the reason that in case more than one person are interested in the subject matter of the

suit, all of them need not come before the Court and the Court may permit one of them to pursue the said case subject to the conditions as specified therein.

9. In view of above provision, what was required to be considered by the Trial Court while entertaining the application under the said provision is as to whether the Plaintiff as same interest as the interest of numerous persons in the subject matter of the suit. Prima facie perusal of the plaint indicates so. Having regard to the nature of suit, it was not necessary for the Plaintiff to disclose names of persons interested in the subject matter. The nature of suit by itself, is sufficient to demonstrate interest of number of persons therein.

10. The learned Trial Court has wrongly made reference to Section 9A of the Code of Civil Procedure which deals with the issue of public nuisance or wrongful act. Bare perusal of the draft plaint does not show that this is a case of public nuisance or wrongful act affecting or likely to affect the public. There is no allegation that there is any mischief or wrongful act sought to be committed or committed in respect of the subject matter of the suit.

11. Having regard to the nature of suit to be filed by Petitioner/Plaintiff, prima facie, there is reason to believe that the suit is in public interest and there are number of other persons who are also interested in the said cause of action. On such prima facie satisfaction, there was no option for the Trial Court not to allow the application to file the suit in representative capacity.

12. As a result of above discussion, impugned order does not survive. Petition, therefore, is allowed. Application filed by Petitioner/Plaintiff before the Trial Court under Order 1 Rule 8 of Code of Civil Procedure stands allowed. The matter to proceed further in accordance with law before Trial Court.

(R. M. JOSHI)
Judge

dyb