

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9058 OF 2024

Baswani Shivyogi Kulkarni

.. Petitioner

Versus

Gangavwa Virbhadra Ity (Since Deceased
through Legal Heirs) and Ors.

.. Respondents

-
- Mr. Anand S. Patil, Advocate for Petitioner.
 - None for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 04, 2024.

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner. None appears for Respondents.

2. On 09.02.2024, after hearing the learned Advocate for Petitioner, this Court passed the following order:-

“1. Not on Board. Mentioned. Taken on Board.

2. Heard Mr. Patil, learned Advocate for Petitioner.

3. Present Writ Petition takes exception to the impugned order passed below Exhibit “68” in Regular Civil Suit No.197 of 2014 which is at page No.30 of the Writ Petition.

4. Mr. Patil would submit that Plaintiff's witness action is over. Suit is filed for declaration and injunction on the basis of a registered deed executed between Plaintiff and Defendant Nos.1 and 2. Defendants' witness action though delayed is yet pending.

5. An Application is filed below Exhibit “68” by a third person under Order I Rule 10(2) of the Code of Civil Procedure, 1908 seeking impleadment. Plaintiff objected to that impleadment. The third party who has sought impleadment

claims to be a maternal legal heir of the purchaser-in-title of Defendant Nos.1 and 2. That case is noted in paragraph No.5 of the impugned order. That is the sole ground accepted by the learned Trial Court for allowing the Application.

6. At the stage of mentioning itself, Mr. Patil has argued and made out a clear case for rejection of the Application under Exhibit "68".

7. In view of the facts noted by the learned Trial Court itself and the registered agreement between the Plaintiff and Defendant Nos.1 and 2 impleadment of a distinctly different third party is impermissible in these fact.

8. Be that as it may, Respondents will be heard and an appropriate order will be passed.

9. The order dated 02.01.2024 stands stayed immediately.

10. The learned Trial Court is directed not to proceed with hearing in Regular Civil Suit No.197 of 2014 till the final disposal of the Writ Petition.

11. Issue notice to the Respondents. Humdast permitted.

12. In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

13. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

14. Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.

15. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

*16. Stand over to **23rd February, 2024.**"*

3. Today, despite service of notice, none is present for the Respondents. The matter was called out in the morning session and it was kept back and the name of Advocate for Respondents was also flashed on the display board, but when the matter was called out in the afternoon, none is present for Respondents. This Court cannot wait and protract hearing of the Writ Petition any further.

4. As delineated in paragraph No.5 of the previous order, I have perused the Application filed below Exhibit “68” which is at page No.30 of the Writ Petition with the able assistance of Mr. Patil. The impleadment of the third party claiming to be a legal heir from the maternal side of the predecessor-in-title of the Petitioner is not at all necessary. That being the sole ground for accepting the impleadment cannot be countenanced.

5. It is seen that there is a registered Agreement between Plaintiff and Defendant Nos.1 and 2 and Suit is filed for declaration and injunction on the basis of this Agreement. Therefore impleadment of a distinct third party who is the son of the predecessor-in-title of the Defendants is not at all necessary nor germane to the cause of action in the Suit. If such a legal heir of the predecessor-in-title of the Defendant has any grievance, he is free to agitate his substantive legal right in an appropriate forum / Court in accordance with law.

6. The impugned order is therefore not sustainable and is quashed and set aside. Resultantly Application below Exhibit “68” stands dismissed. I am informed by the Advocate for Petitioner that Defendants’ witness action is underway.

7. Since the Suit is of the year 2014, the learned Trial Court is directed by this Court to decide the Suit proceedings as expeditiously as possible and in any event within a period of four (4) months from today.

8. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

9. All contentions of parties are expressly kept open before the learned Trial Court.

10. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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