

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13782 OF 2023

Swati Shrikant Ambekar

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents

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- Mr. Sharad T. Bhosale, Advocate for Petitioner.
- Ms. V. S. Nimbalkar, AGP for Respondent Nos.1 and 3.
- Mr. Shailesh Chavan, Advocate for Respondent No.2.
- Mr. Dormaan Dalal i./by Mr. Abhishek Srinivasan, Advocate for Respondent No.4.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 25, 2024

P.C.:

1. Heard Mr. Bhosale, learned Advocate for Petitioner; Ms. Nimbalkar, learned AGP for Respondent Nos.1 and 3; Mr. Chavan, learned Advocate for Respondent No.2 and Mr. Dalal, learned Advocate for Respondent No.4.

2. The impugned order dated 11.09.2023 is passed below Exhibit-11 in Regular Civil Suit No.452 of 2022 allowing the Application of impleadment of Respondent No.4 to the suit proceedings. Petitioner is the Plaintiff. He is aggrieved with the impugned order. He has filed the Suit for seeking an injunction against the State of Maharashtra from interfering with the Suit property. Admittedly, Plaintiff has been put in possession of the Suit property as

a lessee by the State under a lease deed.

3. Dispute is not with respect to the said lease deed. Suit property is nomenclatured as City Survey No.223/3 in the suit plaint.

4. By consent of parties, the map of the suit property and its adjacent properties is taken on record and marked 'X' for identification. Mr. Dalal tenders the said map. It is seen that suit property clearly encompasses two properties belonging to Respondent No.4. These properties of Respondent No.4 are City Survey No.180/3A and 180/A/5A.

5. Mr. Dalal, learned Advocate for Respondent No.4 would submit that both properties are now amalgamated in the revenue record. He would submit that previous proceedings in respect of right of way to approach these properties of Respondent No.4 have been determined by the Civil Court in favour of Respondent No.4. Those proceedings pertained to right of way of Respondent No.4 to approach the *Naka* Road which can be seen from map which would be through the suit property (City Survey No. 223/3). One additional issue is raised by Respondent No.4. That is the encroachment carried out by the Petitioner on original City Survey No.180/A/5A only. In the suit which has been filed for injunction by the Plaintiff - Writ Petitioner with respect to City Survey No.223/3, in view of the previous proceedings between the parties as also with respect to the right of

way through City Survey No.223/3, Respondent No.4 filed impleadment Application in the Suit. Learned Trial Court has allowed the said impleadment Application by the impugned order. That has been challenged in the present Writ Petition before me.

6. Primarily considering the cause of action in the suit plaint and the principal relief in the suit proceedings filed by Plaintiffs, impleadment of Respondent No.4 as proper and necessary party is not required. Suit is simplicitor for injunction on the basis of the right accruing to the lessee under the lease deed. Mr. Dalal informed the Court that the State Government has resumed the suit property and hence the suit is filed. But how is Respondent No.4 concerned as a proper and necessary party with respect to cause of action in the present Suit is not made clear. Hence, I am in agreement with the submissions advanced by Mr. Bhosale that impleadment of Respondent No.4 is not germane to the suit in any capacity considering the cause of action emanating from the lease deed. Mr. Dalal expresses apprehension that the right of way of Respondent No.4 should not be affected and jeopardised and no equity should be claimed either by the Petitioner – Plaintiff or the State against the Respondent No.4. However non-impleadment cannot mean that the substantive right of Respondent No.4 in respect of his twin properties namely City Survey No.180/3A and City Survey No.180/A/5A to have the approach road and right of way as also in respect of encroachment can stand

defeated. Undoubtedly no equity can be claimed by the Plaintiff and the State regarding Respondent No.4's right of way.

7. In view of the earlier orders passed by the Civil Court determining the aforesaid right, the substantive right of Respondent No.4, if affected can always be agitated by the Respondent No.4 in an appropriate proceedings that he may desire to file with respect to the right of way or with respect to removal of any encroachment on City Survey No.180/A/5A. Preserving the right of Respondent No.4, it is held that impleadment of Respondent No.4 in the suit filed for simplicitor injunction by the Plaintiff is therefore not necessary.

8. Needless to state that if Respondent No.4 desires to agitate his substantive right of way, he shall be at liberty to do so in an appropriate proceedings in respect of the same in accordance with law. The impugned order dated 11.09.2023 therefore stands set aside keeping all contentions of the Respondent No.4 open as directed hereinabove.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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