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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2195 OF 2024

Pratap Balasaheb Jadhav and Anr.

.. Petitioners

Versus

Prince Shivaji Maratha Boarding House

Through its Chairman Kisan Ganpat Patil & Anr. .. Respondents

-
- Ms. Sharmishtha Dhananjay Patil, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024.

P.C.:

1. Heard Ms. Patil, learned Advocate for Petitioners who are the Plaintiffs in Regular Civil Suit No.476 of 2022.

2. The impugned order is dated 06.11.2023. Suit is filed on 06.05.2022 by the Petitioners / Plaintiffs seeking injunction in respect of the Suit property. Ms. Patil would argue that the Suit property is in possession of Plaintiffs and therefore Suit for injunction has been filed. Originally the Suit is filed against Respondent No.1 only, but Respondent No.2 approached the learned Trial Court by filing an Application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short “CPC”) seeking his impleadment on the basis that Respondent No.2 has been in peaceful possession of the Suit property since the year 1930. It is the case of Respondent No.2 that some time

in April 2022 the Plaintiffs had started construction on the Suit property. It has been candidly argued and submitted by the learned Advocate that in so far as partition is concerned, it stems from the fact the proposed Defendants in the Suit claim to be belonging to the “Kul” of the original tenant who was tilling the Suit property. She would also point out that Respondent No.2 has also filed an independent Suit bearing Regular Civil Suit No.750 of 2022 on 19.09.2022 seeking possession in respect of the same Suit property which is the subject matter of Regular Civil Suit No.476 of 2022.

3. It is further seen that for seeking possession, there is one more Suit pending between the parties which is Suit No.493 of 2022. Though, Ms. Patil would argue that Petitioners have an excellent case on merits in the principal Suit filed by the Petitioners, but that would only be subject to evidence and trial that would be led and proved by the Plaintiffs. At a pre-trial stage, no findings can be given by the learned Trial Court nor this Court by opining on merits of the matter save and except if the Court comes to the conclusion on the basis of strong *prima facie* evidence. It shall therefore be open to Plaintiffs in all the 3 Suit / proceedings to approach the learned Trial Court to seek clubbing of the 3 Suits together. In so far as the impugned order dated 06.11.2023 is concerned, I have perused the same. The said order is a detailed order giving cogent reasons for impleadment of the proposed Defendant No.2 on the specific ground that the Suit property in respect

of the Suit filed by proposed Defendant No.2 i.e. Regular Civil Suit No.750 of 2022 is the same as that of the present Suit proceedings in Regular Civil Suit No.476 of 2022.

4. Undoubtedly, one of the strongest reason which enures and is considered is that there should be no multifarious proceedings in respect of the same Suit property filed by the same parties.

5. Ms. Patil in support of her case to challenge the impugned order makes a reference and reliance in the decision in the case of *Ramesh s/o. Shama Kumbhar and Anr. Vs. Sudhakar s/o. Budha Kumbhar and Ors.*¹ and would draw my attention to paragraph No.8 and would contend that in any Suit proceedings, Plaintiffs are the *dominus litis* and it would be the Plaintiffs' prerogative to implead the Defendants which would be ultimately depend on the *lis* in the Suit plaint. She would submit that if the proposed Defendant is aggrieved it would be at liberty to take recourse to available remedy as held by the Court in the above decision. It is seen that in the decision relied upon by the learned Advocate for Petitioners it pertained to parties and their entitlement in the Suit properties on the basis of mutation entries which had determined the rights of the parties therein. However, in so far as the present proceedings are concerned, it is seen that there are 3 specific parties involved who are the landlord of original property, the successor-in-title of the original tenant of the Suit property and

¹ 2013 (4) Mh.L.J. 81

Respondent No.1 who is also the successor-in-title which is a Trust and claims to be in possession of the Suit property since 1930. The above decision relied upon by the learned Advocate therefore is clearly distinguishable and cannot be applied *per se* to the facts of the present case.

6. In view of the above observations and findings, I do not find any reason to interfere with the cogent reasons returned by the learned Trial Court in paragraph Nos.9 to 14 of the order dated 06.11.2023. Impleadment of proposed Defendant No.2 in the facts of the present case and more specifically Defendant No.2 having already filed a substantive Suit being Suit No.750 of 2022 it is held that he is a proper and necessary party. Hence, the order dated 06.11.2023 is upheld and confirmed.

7. Needless to state that this Court has not expressed any opinion about the merits of the matter and it shall be the prerogative of the parties to the Suit proceedings to lead appropriate evidence and prove their respective case in accordance with law.

8. It is clarified that learned Trial Court shall not be influenced by any observations made in this order as the same are *prima facie* in nature.

9. All contention of all parties are expressly kept open.

10. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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