



1955-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1955 OF 2023

(Madhukar s/o Shankar Bhongare (dead) through LRs Vs. Uttam s/o Shankar Bhongare)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri U.J. Deshpande, Counsel for the petitioners.
Shri R.J. Shinde, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
AUGUST 28, 2024.

The petitioner – original plaintiff (now represented by legal representatives) is aggrieved by order dated 13/10/2022 passed by the District Judge – 4, Akola, in Miscellaneous Civil Appeal No. 70/2022, thereby setting aside the order dated 25/3/2022 passed by the Civil Judge Junior Division, Barshitakli, in Regular Civil Suit No. 25/2018, granting temporary injunction in favour of the petitioner – plaintiff.

2] The First Appellate Court has held that the defendant's claim of possession is established and further that the Court will not be justified in replacing the said view with its own view, meaning thereby, that the First Appellate Court had upheld the finding rendered by the trial Court that the petitioner - plaintiff is in possession of the suit property. The First Appellate Court, however, thereafter proceeds to note that one Padmabai is a necessary party to the suit. The First Appellate Court notes that the petitioner – defendant has not resisted the suit on the ground of non-joinder of necessary party.

3] Thus, according to the petitioner - defendant, Padmabai is not a necessary party. Despite said fact, the First Appellate Court has taken a view that the suit cannot proceed in absence of Padmabai and, accordingly, allowed the appeal and set aside the order passed by the trial Court.

4] The learned Counsel for the petitioners has rightly argued that firstly, the petitioner had not raised plea of non-joinder of necessary party. Secondly, the defect of non-joinder of necessary party is a curable defect. It is nobody's case that Padmabai is a necessary party.

5] In the circumstances, if the First Appellate Court was of the view that Padmabai is a necessary party, it could have directed the respondent to add her as party defendant to the suit, but could not have disturbed the finding of the trial Court that the petitioner is/was in possession of the suit property.

6] The learned Counsel for the respondent, though made an attempt to support the order passed by the First Appellate Court, he could not satisfy that the issue of non-joinder of party was so material that would affect the order of injunction passed by the trial Court.

7] In that view of the matter, the order impugned is unsustainable in law.

8] The Writ Petition is accordingly allowed. The order dated 13/10/2022 passed by the District Judge – 4, Akola, in Miscellaneous Civil Appeal No. 70/2022, is

quashed and set aside and the order dated 25/3/2022 passed by the Civil Judge Junior Division, Barshitakli in Regular Civil Suit No. 25/2018, is restored.

(ANIL L. PANSARE, J.)

Sumit