



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

WRIT PETITION NO. 965 OF 2019

(Subhash Chandra Chhaganlal Sharma and another ..vs. Omprakash Chhaganlal Sharma)

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

Court's or Judge's

Mr. P.A. Deshpande, Advocate for the petitioners.

CORAM : ABHAY J. MANTRI, J.

DATED : 12-09-2024

The petitioners challenged the order dated 04-10-2018, passed by the learned 7th Jt. Civil Judge J. D. Akola, in R. C. S. No.553/2009, whereby rejected the application to add the proposed defendants as party defendants to the suit.

2. The learned Advocate for the petitioners has vehemently contended that the learned Judge has categorically observed that the proposed defendants have a substantial interest in the subject matter of the suit. Besides, the learned Judge has framed the issue as a 'non-joinder of necessary party'. Despite the said fact, the learned Judge has rejected the application for adding them as party defendants to the suit.

3. To substantiate his contentions, he has relied on the judgment of the Hon'ble Apex Court in the case of *Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others* reported in (2010) 7 SCC 417, particularly paragraph No.13 of the said judgment and canvassed that the plaintiff being a *dominus litis*, may choose

the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Hence, he propounded that the impugned order is contrary to the law laid down in the judgment. Therefore, he has urged for allowing the petition.

4. It appears that despite service of notice, the respondent has chosen not to appear in the petition. Hence, in his absence, the matter is finally heard and decided.

5. Perused the record and impugned order. I have appreciated the submissions of the learned Advocate.

6. The crucial question that arises before the Court is that -
‘Whether the proposed defendants are necessary and proper parties to the suit ?’

7. A perusal of the plaint *prima facie* does not appear that the proposed defendants are necessary and proper parties, as nothing has been averred against them. The plaintiffs have filed a suit for a permanent injunction to restrain the defendants from obstructing their possession over the suit property. No specific averment was made against the proposed defendants that they are disturbing or causing interference over the possession of the suit property. Therefore, they are the proper and necessary parties to the suit. However, it only reveals that as the original defendant raised an objection, the suit was hit for non-joinder of the necessary party, and the Court has framed the issue in that regard. As such, the petitioners want to add the proposed defendants as parties to the suit. In the absence of the pleadings in the plaint, it would not be proper to say that the

proposed defendants are proper and necessary parties to the suit. Even if they have a substantial interest in it, as alleged by the petitioners and observed by the trial Court in the order.

8. The Order I Rule 10 of the Civil Procedure Code makes it clear that a Court may, at any stage of the proceedings, either upon or even without application, and on such terms may appear to it to be just, direct that any person whose presence before the court may be necessary to enable the court to effectively and completely determination of the real matter in dispute between the parties, the presence of the party is required; in such an eventuality, only they can be said as a necessary and proper party to add in the suit. The learned trial Judge has categorically observed that the presence of the proposed defendants is not necessary for a full and final adjudication of the issue involved in the suit and, therefore, rejected the application. That being so, I do not find any illegality or perversity in the impugned order.

9. *Moreover*, merely framing the issue, whether the suit is liable to be dismissed for non-joinder of a necessary party, is not sufficient to add the proposed defendants in the suit in the absence of the specific pleadings against them. Perhaps said issue was framed based on averments made in the written statement by the original defendant, but that does not mean that those proposed defendants are necessary and proper parties. The plaintiffs have filed a simpliciter suit for permanent injunction restraining the defendant who has obstructed their possession over the suit property. *Furthermore*, the reliefs claimed by the petitioners show that the defendant or anybody on his behalf is restrained from causing and disturbing their

possession over the suit property, which includes the proposed defendants also. Therefore, I do not find substance in the contention of the learned Counsel for the petitioners in that regard.

10. The learned Advocate has further argued that the original defendant has tried to sell the suit property in favour of the proposed purchasers. The petitioners knew the fact from the notice published in the '*Deshonnati*' Newspaper dated 11-11-2009. Therefore, he has submitted that the proposed defendants are proper and necessary parties to the suit. However, neither the said public notice produced before the Court, nor it appears from the pleadings that the proposed defendants are to be necessary parties to the suit. *Besides*, the proposed defendants' names have also not been mentioned in the said notice. Thus, I do not find substance in his contentions in that regard.

11. Lastly, he has propounded that on 19-01-1976, the deceased Rukhminibai executed a sale deed in favour of the defendant. However, he canvassed that the said sale deed was nominal, sham, and bogus and that it was nominally executed in favour of the defendant instead of the proposed defendants, who have rights, titles, and interests in the suit property. Therefore, he has submitted that the proposed defendants are necessary and proper parties to the suit. It is pertinent to note that the sale deed on which they are relying is not produced before the Court, nor from the averment does it appear that the said sale deed was executed in favour of the proposed defendants. On the contrary, it is evident that the said sale deed was executed in favour of the defendant only. Therefore, I am

not inclined with the submission made by the learned Advocate in that regard.

12. Perused the judgment in the case of ***Mumbai International Airport Private Limited*** (*supra*), wherein the facts differ from the case at hand. There is no dispute about the dictum laid down in the said judgment. However, the necessary pleadings against the proposed defendants are absent in the case at hand. In the above background, in my view, these proposed defendants are not necessary and proper parties to adjudicate the fact issue in the case. As such, the observations made in the cited judgment (*supra*) are not helpful to the petitioners in support of their contentions.

13. Thus, in the light of above discussion, it appears that the petitioners have failed to show that the proposed defendants are necessary and proper parties to adjudicate the matter in dispute between the parties. Consequently, in my view, the impugned order passed by the learned trial Judge is just and proper, and no interference is required in it. Hence, the petition being bereft of merit stands dismissed. No costs.

14. Interim relief granted by this Court on 07-02-2019 stands vacated. Inform the learned trial Court immediately.

(ABHAY J. MANTRI, J.)

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