

petitioners and therefore petitioners are the necessary parties in the suit.

The opposite party no. 1 herein instituted the instant suit for declaration and injunction in respect of A and A1 schedule property comprising of LR plot no. 457 and 461. It is also the plaintiff's case that A1 schedule property is part of A schedule property in LR plot no. 457. Learned Trial court by an order dated 8th May, 2023 passed an order of injunction restraining the defendants from creating any disturbance on the peaceful possession of the plaintiffs. A local inspection commission was also held in connection with the suit property. Learned counsel for the petitioners has pointed out that the injunction order records that *"during the commission work, commissioner did not find the existence of any passage or any slide over the A1 schedule property and he also mentioned that there is no egress and ingress way of plot no. 463 belongs to the defendant except the statutory space of Nabibur and others property situated at plot no. 462 and 464"*.

Petitioners counsel further submits that the Trial court has rejected his prayer ignoring the plaint case and the sketch map attached to the plaint and without appreciating that the petitioners have specifically made out a case and that the plaintiff is claiming decree of ownership over that strip of land which falls within the plot of land owned by the petitioners herein.

Accordingly, if any decree is passed in favour of the plaintiffs, right of the petitioners on their property shall be seriously prejudiced and accordingly, she prayed for setting aside the order impugned and to allow the present petitioners to be impleaded in the category of defendants in the said suit.

Learned counsel for the opposite party opposed the prayer contending that from the plaint itself, it is clear that the plaintiff has sought for declaration and injunction in respect of the property mentioned in A and A1 schedule property which is owned by the plaintiffs/petitioners. Since plaintiff has not sought for any relief against the petitioners herein nor in respect of the land owned by the present petitioners, there is no requirement that the suit is to be heard in the presence of the present petitioners. Accordingly, he submits that the order of the Trial court is justified and does not call for interference by this court invoking its jurisdiction under Article 227 of the Constitution of India.

I have gone through the order impugned which discloses that the learned court below, on perusal of the plaint found that the plaintiff's suit is for declaration of A and A1 schedule property of the plaint along with a decree for permanent injunction restraining the defendants from using A1 schedule property and causing any damage and restraining from

creating any pathway thorough the A1 schedule property to connect the property of the defendants with the Panchayat road. Court below further recorded in his order that A1 schedule property is 5 decimal of land out of A schedule property which is used as garden in LR plot no. 457 and the disputed plot in the instant suit is LR no. 457 and 461 and, the petitioners herein have their residential unit in LR plot no. 462 which is not the subject matter of the suit and accordingly, the court below did not find any reasonable ground for adding the petitioners as necessary parties in the instant suit.

Needless to say for determining the question, who is a necessary party, tests are that there must be a right to some relief against such party in respect of the controversies involved in the proceeding and secondly no effective decree can be passed in the absence of such party.

In the instant case if the petitioners are not impleaded in the present suit, the result of the suit cannot bind the petitioners, who have the remedy to file an independent suit or raise the objection as taken in this application for addition of party even on an execution proceeding arising from a decree, if any, passed in favour of plaintiff. Therefore petitioners are not remediless, in the event they have an actual right title in any portion of the suit property. As such it can

not be said that trial court has acted without jurisdiction while rejecting petitioners prayer for adding them as parties in the suit, or the order impugned has resulted in any gross or manifest failure of justice nor there is any illegality or perversity committed by the court below, while passing the impugned order.

Furthermore, the plaintiff is the dominus litus of the suit and being the master of the suit, he is to decide against whom he wants to fight and against whom he does not want to fight. Since the power under Article 227 of the Constitution of India is to be invoked only in cases where there is gross illegality or perversity and since the order impugned does not disclose any impropriety or perversity, I find nothing to interfere with the order impugned and as such, C.O. 3882 of 2024 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Dr. Ajoy Kumar Mukherjee, J.)