



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1513 OF 2024

Deelip Venkatrao Yachawad And Others

VERSUS

Abdul Yusuf Abdul Razzak Shaikh Alias Abdul Yusuf Abdulla And Another

Mr. A. A. Fulfagar, Advocate for Petitioners

Mr. N. N. Narlowar h/f Mr. S. R. Bagal, Advocate for Respondent No. 2

CORAM : R. M. JOSHI, J.

DATE : 03rd March, 2025

PER COURT :-

1. This petition takes exception to the order dated 02.12.2023 passed below Exhibit 21 in Regular Civil Suit No. 204/2023 rejecting application filed by Petitioners/Intervenors.

2. Respondent filed suit bearing Regular Civil Suit No. 204/2023 with following reliefs:-

1. A decree of mandatory injunction may kindly be passed for removal of the said illegal board erected in the landed property of this plaintiff.

2. A decree of perpetual injunction may kindly be drawn in favour of the plaintiff against the defendant restraining him, his relatives, persons, helpmates or claiming through anybody else may kindly be restrained from making any obstruction over landed property described herein above, in any manner, under any pretext, by awarding a decree in that regard in favour of plaintiff an against the defendant.

3. Cost of the suit may kindly be awarded in favour of the Plaintiff from the defendants.

7. Any other just, proper and equitable relief to which the plaintiff will be found entitled too, legally may also be awarded in favour of the plaintiff and against the

defendant in the given circumstances.

3. These reliefs are sought with specific averment that respondents/plaintiffs are owners and in possession of the suit property.

4. Petitioners/interveners filed application before the Trial Court for joining themselves as Defendants vide Exhibit 21. In this application, it is specifically averred that on the basis of lay out plan, sanction granted by corporation, defendants have right in suit property and plaintiff cannot claim the same but plaintiffs claim to be in possession thereof. On the basis of said document, sale deeds in favour of the interveners, it is claimed that they are in ownership and possession of the suit property. This application is rejected by the Trial Court with observation that if the applicants have any right, they can file separate suit.

5. Learned counsel for petitioners submits that once dispute is made by the applicant about the possession of plaintiffs over the suit property and such claim is prima facie substantiated by documentary evidence, it was not open for Trial Court to reject application for interveners by observing that applicant can file separate suit for the said purpose. It is his submission that the Trial Court has ignored the fact that without recording findings of possession of plaintiff over the suit property, the Trial Court would not be able to grant injunction in respect of the same. Thus, according, to him any such finding recorded on

possession would be against petitioner and will cause prejudice to him. According to him, there cannot be two separate proceedings in respect of the declaration of the possession of the same property.

6. Learned counsel for respondents/plaintiffs supported the impugned order. It is his contention that by relying upon the replies received under the Right to Information Act that the corporation has not granted any permission/layout which is sought to be relied upon by the petitioner. It is his submission that the relief sought are not against the petitioner but against the corporation and as such petitioners are not necessary or proper parties to the suit. To support his submission he placed reliance on the judgment of this Court in case of **Digambar s/o Sambaji Pused Vs. State of Maharashtra & Ors 2008 (3) ALL Mr 801.**

7. Prima facie, perusal of the plaint clearly shows that plaintiffs claimed themselves to be owner and in possession of the suit property. As against this, petitioners/interveners also claim possession thereof on the basis of sale deeds executed in their favour by their vendors so also lay out sanctioned by the corporation. At this stage, it cannot be decided as to whether the lay out is genuine or otherwise. Since merit of amendment cannot be determined at this stage of suit. Suffice it to say that issue before the Trial Court would be as to whether the plaintiffs or

interveners are in possession of the suit property. As far as the contention of the learned counsel for respondents about validity/correctness of the permission and lay out is concerned, it is for the Trial Court to consider the same while deciding the suit on merit.

8. Learned Trial Court has held that interveners can file separate suit. Needless to say that there could not be two different suits in order to decide the issue of possession of the same property. Filing of such independent suit may lead to recording of contradictory findings on the fact in two suits. Moreover, this is not the case wherein there is absolutely no material on record to indicate that the interveners have any right, title or interest in the suit property or that their claim for possession is without any justification. Suffice it to say that relief was sought in the suit is directly affecting the petitioners herein and as such, they are necessary parties.

9. As a result of the above discussion, impugned order cannot sustain. Hence, set aside. Application Exhibit 21 is allowed. Plaintiff is directed to carry out amendment to the plaint. Defendant be permitted to file written statement in Trial Court. Needless to clarify that all the points are kept separately open for the consideration by the Trial Court.

(R. M. JOSHI, J.)

bsj