



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4218 OF 2020

- 1 Raju s/o Ramesh @ Ramaiyya Mitre
Age : 52 years, Occu : Private Job,
R/o : Mahaveer Nagar, Purna,
Tq. Purna, Dist. Parbhani,
At present R/o : Padegaon,
Tq. and Dist. Ahmednagar
 - 2 Vinod s/o Ramesh @ Ramaiyya Mitre,
Age : 44 years, Occu : Legal Practitioner,
R/o : Mahaveer Nagar, Purna,
Tq. Purna, Dist. Parbhani
- **Petitioners**
(Ori. Intervener)

Versus

- 1 Motiram S/o Nayanna Mitre,
Age : 67 years, Occu : Business (Contractor)
R/o : Mahaveer Nagar, Purna,
Tq. Purna, Dist. Parbhani,
 - 2 Prakash S/o Ramesh Mitre,
Age : 55 years, Occu : Labour,
R/o : Mahaveer Nagar, Purna,
Tq. Purna, Dist. Parbhani,
 - 3 Pralhad S/o Ramesh Mitre,
Age : 48 years, Occu : Service,
R/o : Mahaveer Nagar, Purna,
Tq. Purna, Dist. Parbhani
- **Respondent**
(Ori. Plaintiff)
- **Respondents**
(Ori. Defendants)

Advocate for Petitioners : Mr. V. P. Latange
Advocate for Respondent No. 1 : Mr. M. M. Patil Beedkar

CORAM : MANJUSHA DESHPANDE, J.

PRONOUNCED ON : 29 JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The petitioners are challenging the order dated 30.11.2019 passed below Exh. 42 in Special Civil Suit No. 51 of 2016 by the Civil Judge Senior Division, Parbhani (Trial Court).

3. The petitioners have filed an application before the Trial Court (Exh. 42) for impleading them as a party i.e. defendants No. 3 and 4 in the plaint and to give directions to the plaintiffs to carry out necessary amendment in the plaint. In the application, the petitioners have contended that they are the real brothers of respondents No. 1 and 2 in the suit and their father namely Ramesh @ Ramaiyya S/o Nayanna Mitre was real brother of the present plaintiff who died in the year 2014. The plaintiff has added only two legal heirs of deceased Ramesh in the suit i.e. present respondents No. 2 and 3. It is further contended that the suit property in question is the joint family property of plaintiff and the father of the present petitioners. Plaintiff has intentionally not added them as a defendants in the suit to defeat their legal rights. The presence of the petitioners is necessary in the

suit. If they are added as a party in the suit, there will be no prejudice caused to any of the parties. Without their presence, the suit cannot be completely and effectively proper adjudicated, they are necessary parties. If the application is not allowed, the legal rights of the petitioners will be frustrated and create multiplicity of proceedings in future. In order to avoid multiplicity of the litigations, they are necessary parties to the suit.

4. It is the case of the petitioners that present respondent No. 1 had filed Special Civil Suit No. 51 of 2016 against the respondents No. 2 and 3 for recovery of possession. The respondent No. 1 had claimed that he is the owner of the property bearing municipal house No. 4-7-1, plot No. 82, ward No. 6, total measuring area 2500 Sq. Ft. situated at Mahaveer Nagar, Purna. The plaintiff had constructed four shops and also constructed four room in which plaintiff is residing with his family. Since defendants did not have any job and looking to the fact that their father is no more, the plaintiff has permitted defendants No. 1 and 2 to reside in the three rooms which were situated in the middle side of the suit property as licensee. But, due to misbehaviour and nuisance caused by the defendants No. 1 and 2, he had terminated their license and claimed the recovery of possession.

5. The defendants No. 1 and 2 have resisted the claim of the plaintiff and filed their written statement and also filed the counter-claim. The defendants have denied the contentions of the plaintiff and claimed that the disputed property is a joint family property of the defendants' father and plaintiff. The property is purchased from the joint nucleus of the defendants' father and the plaintiff and they have claimed declaration regarding ownership and it's half portion towards east side on the basis of memorandum of partition dated 25.10.1998.

6. Learned Advocate for the petitioner had drawn my attention towards Issues No. 3 and 5 framed by Trial Court at Exh. 32 on 20.11.2018, which read thus :

“3. Does the defendants prove that, the suit property is joint family property of their father and plaintiff as it is purchased from joint nucleus ?”

“5. Do the defendants prove that, the partition was took place as per memorandum dated 25.10.1998 ?”

7. Learned Advocate Mr. Latange for petitioner submitted that in view of the issues framed by the Trial Court, it is necessary to add the petitioners as a party i.e. defendants in the suit filed by the plaintiff. According to him, since they are real brothers of defendants No. 1 and 2 in the suit, they possess equal rights. If they are not added as defendants in the suit, it will cause irreparable loss to them

in both the contingencies, i.e. even if the suit is allowed or even if the counter claim is allowed. Therefore, the present petitioners are necessary parties to the suit.

8. In para No. 4 of the impugned order, the Trial Court has observed that the suit is for recovery of possession of 300 Sq. ft. area. As per plaintiff, the said premises were given to the defendants No. 1 and 2 as a licensee. The relationship of defendants No. 1 and 2 are the sons of deceased brother of plaintiff is not disputed by the parties. It is further observed that as per plaintiff, the suit is for recovery of possession for the area which is in the possession of defendants No. 1 and 2, therefore, petitioners are not necessary parties in the suit. It is further observed that the applicants and defendants are real brothers and they have filed counter-claim seeking declaration of ownership and possession of three properties.

9. After taking into consideration the relief claimed by the plaintiff in the suit, the Trial Court has observed that the suit is filed against the defendants for recovery of possession of premises which is in their possession and considering the submission of learned counsel for the plaintiff, the third parties i.e. petitioners are not necessary parties in the suit. Therefore, the application is rejected. The learned Advocate for the petitioners submits that to avoid the irreparable loss

to the petitioners, they are necessary party in the said suit.

10. Per contra, learned Advocate appearing for respondent No. 1 submits that the relief claimed by the plaintiff is for recovery of possession. There is no relief claimed against the present petitioners. The plaintiff is *dominus-litus* and it is his choice as to who should be added as party to the suit. If no relief is claimed against the present petitioners, they are not necessary parties. He has also drawn attention of this Court to the prayer made in the suit which reads thus :

“It is therefore most respectfully prayed that, suit of plaintiff may kindly be decreed for recovery of possession of an area 300 Sq. Feet out of property bearing plot no. 82, Survey no. 8, municipal house no. 4-7-1, ward no. 6, situated at Mahaveer Nagar, Purna particularly shown in read colour in map”

11. In view of the same, the suit is restricted only to the extent of 300 Sq. Ft. out of property bearing plot no. 82, Survey No. 8, Municipal House no. 4-7-1, Ward No. 6, situated at Mahaveer Nagar, Purna. As against that, he has drawn my attention to the counter-claim wherein the declaration in respect of three properties have been sought by the defendants. Therefore, considering the restricted relief claimed in the suit, they are required to be added in the counter-claim and not in the suit filed by the plaintiff. If such situation arises, the rights of the applicants would be affected.

Therefore, if at all they are necessary parties, it is not in the suit but in the counter-claim which is filed by defendants.

12. Considering the rival submissions and after perusing the impugned order, it is evident that the plaintiff has merely sought relief of recovery of possession against defendants No. 1 and 2. Even if suit is decreed, no prejudice is likely to be caused to present applicants. So far as the relief claimed in the application is concerned, prejudice is likely to be caused to the applicants, if the counter-claim is decreed. Therefore, I do not find any error in the observations as well as in the order passed the Trial Court by rejecting the application.

13. Addition of necessary parties is governed by Order I Rule 10 of the Code of Civil Procedure, which reads thus :

10. Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so as to do, or order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

14. The law in this regard is well settled. The necessary party is a person whose presence before the court is necessary in order to

enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit. A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate disputes between the parties. Therefore, for complete adjudication and settling the dispute between the parties, his presence is necessary and indispensable, only in such situation, the application for addition of parties is allowed.

15. In view of the settled position of law, I do not find that any case is made out by the petitioners for causing interference in the impugned order. Hence, writ petition deserves to be dismissed. Hence, following order.

ORDER

- I. Writ Petition is dismissed.
- II. Rule stands discharged.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi