



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

WRIT PETITION NO. 6836 OF 2022

Shashikala Raosaheb Wagh Deceased Through Lrs Babasaheb Raosaheb Wagh
And Others

VERSUS

Bhusaheb Murlidhar Dushing Deceased Through Lrs Anita Bhausaheb
Dushing And Others

Mr. Z. M. Pathan, Advocate for Petitioners

Mr. R. R. Karpe, Advocate for Respondent No. 6

CORAM : R. M. JOSHI, J.

DATE : 25th March, 2025

PER COURT :-

1. By consent of both sides heard finally at the stage of admission.
2. This petition takes exception to the order passed below Exhibit 134 dated 07.04.2022 in Regular Civil Suit No. 438/2005 whereby the application filed by third party for joining himself as plaintiff to the suit came to be allowed.
3. Petitioners are defendants in the said suit. The said suit came to be filed by the plaintiffs against defendants for seeking possession of the alleged encroached subject property so also injunction against the defendants. This suit came to be filed in the year 2005. Defendants appeared in the suit and filed

written statement on 19.12.2005. Issues were framed in the year 2007. The proceedings continued before the Trial Court. After about 11 years, application Exhibit 134 came to be filed by the intervener/respondent No. 6. This application was filed by contending that the third party has purchased the portion of the suit property by registered sale deed dated 15.12.2010. It is further averred that since the suit is for the removal of encroachment and possession of the subject property as his interest involved therein, the impleadment is sought. This application is opposed by the defendants denying the contentions of the third party intervener. Application is also opposed on the ground that the transaction of sale executed between the plaintiffs and intervener is barred by principle of lis pendens. The application has also objected on the ground that the same has been filed belatedly. Learned Trial Court allowed the said application. Hence, this petition.

4. At the outset, learned counsel for the petitioner submits that the petitioner was not heard before passing the impugned order. In this regard, he has drawn attention of the Court to the order passed by Trial Court. This contention is opposed by the learned Counsel for contesting respondent by pointing out order of rejection which indicates that already last chance was granted to the petitioners/original defendants and since opportunity was not

availed, no grievance made in this regard can be entertained at this stage.

5. Learned counsel for petitioners further submits that even if the contention of the intervener is accepted that in the year 2010, sale deed came to be executed in his favour in respect of the portion of suit property since the application has been filed after 11 years, the same is not maintainable. To support his submission, he placed reliance on the judgment of Rajasthan High Court in case of **Ramesh Chand v. State of Rajasthan AIR Online 2019 Raj 1451**. He also placed reliance on the judgment of Hon'ble Supreme Court in case of **Sarvinder Singh vs. Dalip Singh 1997(1) Mh.L.J. (S.C.)539**. He also placed reliance on the judgment of Co-ordinate bench of this Court in case of **Shaila Subrao Shetye and others vs. Kunda Madhukar Shetye and others [2014(3) Mh.L.J. 194]** wherein it is held that the plaintiff being dominus litis is entitled for his say regarding the parties of the suit. However, the said right is not absolute and cannot be used to defeat the statutory rights of other parties. Apart from this, on the merit, it is his contention that there is no description given of the property in the application for intervention so also no pleadings are sought to be added. It is his submission that since no relief is sought by the plaintiffs as he is not joined as a party to the suit.

6. Learned counsel for the respondents supports the impugned order

by contending that the petitioners have filed suit in respect of the same property in Regular Civil Suit No. 1120/2011 wherein the intervener is joined as a defendant. By drawing attention of the Court to the written statement filed in the present suit, it is pointed out that the defendant admits that the suit property subject matter of both suits is same. Thus, it is his contention that there is no substance in the petition about the intervener being not given opportunity of hearing of the property allegedly purchased by him.

7. There cannot be any quarrel made with regard to the proposition that the plaintiff is dominus litis however it is not absolute right of the plaintiffs to join anyone as a party and more particularly if addition of such party is likely to affect adversely to the other side. In such situation defendant/other side has right to take exception to such impleadment. Thus, if the defendants are in a position to show that the prejudice is likely to be caused to the defendants by impleadment of the intervener as a plaintiff, in that case, such submissions can be considered.

8. Here, in this case, prima facie there is material on record in the form of written statement filed by the petitioners-defendants indicating that the suit property in this suit is sam in the suit filed by the petitioners against intervener being Regular Civil Suit No. 1120/2011. Thus, it cannot be said that

the intervener is not concerned with the suit property or subject matter involved in this suit. The contention of the intervener about his interest in the suit property gets prima facie supported by the sale deed executed by the plaintiffs in his favour.

9. In so far as, a principle of lis pendens is concerned, here, in this case, it is not defendant who has created third party interest in order to make his purchaser bound by the decree passed against the defendant. In case of Sarvinder Singh (cited supra) the situation before Hon'ble Supreme Court was with regard to the defendants alienating the property during the pendency of the suit. In such circumstances, it was held that purchaser is not necessary or proper party to the suit. In contrast thereto, plaintiff were owner of the entire suit property from which land admeasuring 5 R is sold to the intervener. Prima facie, intervener, therefore, has acquired interest in the said property. Suit is not only for injunction but is also for removal of encroachment allegedly caused by defendants. In such circumstances, any order passed in this suit will directly affect the interest of the intervener.

10. As far as the delay caused in filing of the application for joining intervener as plaintiffs is concerned, it appears from the Application Exhibit 134 that the intervener is simply seeking impleadment without any addition to

the pleadings or prayers. As such, no prejudice will cause to defendants by the impugned order. In the result, this Court finds no reason or justification to cause interference therein.

11. Hence, petition stands dismissed. As far as non giving of opportunity to the petitioner is concerned, the order passed by the Trial Court indicates that last opportunity was given and since that opportunity was also not availed by the petitioners/defendants, now his grievance cannot be entertained.

12. Needless to say that though this petition is dismissed, all issues sought to be raised by the defendants in respect of the right of intervener to seek any relief against them are kept specifically open. It is clarified that above observations are prima facie in nature and Trial Court is not bound by the same.

(R. M. JOSHI, J.)

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