



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

WRIT PETITION NO. 9534 OF 2023

**EKNATH UTTAM TELTUMBADE
VERSUS
TAUSIF DADABHAI SHAIKH AND ANOTHER**

...

Advocate for the Petitioner : Mr. Pathan Zafar M

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 18th FEBRUARY 2025

PER COURT :

. Heard the learned Counsel for the parties.

2. Both the Respondents were served with notice for final disposal. But they chose to remain absent. None appears on their behalf. Hence petition is taken up for final disposal.

3. Petitioner original plaintiff is assailing order dated 18.09.2019 passed below Exhibit-18, thereby permitting the present Respondent No.2 to be impleaded as defendant in suit. Petitioner has filed RCS No.196/2017 for perpetual injunction against Respondent No.1. Despite of service, Respondent No.1 remained absent and order was passed to proceed ex-parte against him on 16.01.2019. Thereafter Respondent No.2 who was not party submitted application at Exhibit-18 under Order 1 Rule 10 of the Civil

Procedure Code to implead him as a party defendant. By impugned order, his application was allowed.

4. Learned Counsel for the petitioner submits that though there are laches in presenting this petition, there are adequate reasons which are mentioned in paragraph no.8 of the memo of the petition for not approaching this Court in time. He would submit that Respondent No.2 is not a necessary party. No relief is claimed against him. The relief of injunction is individual centric. Respondent No.2 is not the adjoining land owner. No prejudice would be caused to him, if the suit is entertained. Learned Counsel for the petitioner has referred to the revenue record of land of the parties and the contentions of application at Exhibit-18 to buttress that Respondent No.2 is not a necessary party.

5. I have carefully gone through the explanation tendered by the petitioner in paragraph no.8 for filing this petition belatedly, challenging order dated 18.09.2019. The contentions are not controverted by the Respondents. A plausible explanation is given by the petitioner. His petition deserves to be entertained on merit.

6. Petitioner has filed suit for injunction against Respondent No.1. He is in possession of Survey No.13/22 out of Survey No.10/2. He had purchased this property on 03.06.1997. A part of it is constructed by him. It is pleaded in the plaint that Respondent No.1 was threatening him for alienating the suit property. Petitioner was in

service and the resident of Satara. Respondent No.1 was taking disadvantage of this fact. The nature of the suit and relief claimed therein, are in personam and against Respondent No.1. Plaintiff does not show any role of the respondent no.2.

7. I have gone through the application at Exhibit-18 filed by the respondent no.2 under Order 1 Rule 10. His application is vague and lacks material particulars. If he has to make allegations against the petitioner or has grudge against his conduct, the remedies are available to him. Those can be resorted to. But impleadment in the suit filed by the petitioner cannot be resorted to.

8. The revenue record shows that the petitioner is the owner of Survey No.13/22 and Respondent is the owner of Survey No.13/124. Petitioner's contention that both the properties are not adjacent is uncontroverted and has to be accepted. There is nothing on record to show that right or interest of the Respondent No.2 is prejudiced by the suit filed by the petitioner. It is incomprehensible as to how the Respondent No.2 is necessary party.

9. Entire grievance of the petitioner is against the conduct of Respondent No.1. Application of the Respondent No.2 at Exhibit-18 is misuse of process of law. By the impugned order, learned Judge committed perversity in entertaining the application. It is open for the third party to file independent proceeding, if any prejudice is caused. Hence I am inclined to allow this petition by passing

following order :

ORDER

- (i) Writ Petition is allowed in terms of prayer clause B.
- (ii) There shall be no order as to costs.
- (iii) The trial Court shall proceed with the suit, ignoring the written statement filed by the Respondent No.2.

**SHAILESH P. BRAHME
JUDGE**

NATEEB..