



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8421 OF 2024

Uma Jayantilal Rathod And Others
VERSUS
Kartar GopalDas Pamnani And Others

- Mr. P. B. Shirsath, Advocate for the Petitioners
- Mr. D. A. Bide, Advocate for the Respondent Nos. 1 and 2
- Mr. V. S. Bedre, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 26, 2025

PER COURT :

1. This Petition takes exception to the order dated 16.04.2024 passed by the Trial Court in RCS No. 176/2015 below Exh. 184 whereby the application filed by the Petitioners/Original Defendant Nos. 3 to 5 for deleting their names from the array of the Defendants is rejected.

2. It is the case of the Petitioners that the Respondents/Original Plaintiffs in the earlier round of litigation had made statement before this Court in Writ Petition No. 7514/2020 that the Plaintiffs are not seeking relief of possession of the constructed

portion. It is further claimed that once Plaintiffs are not seeking any relief against these Defendants, the question of continuing them to be party to the suit does not arise.

3. Learned Counsel for the Petitioners has drawn attention of the Court to the order dated 15.01.2021 passed in Writ Petition No. 7514/2020 wherein in Clause No. 2 it is recorded that the Counsel for the Petitioners has made statement that the Petitioners/Plaintiffs have not sought any relief against Defendant Nos. 3 to 5 of possession of the constructed portion. It is his submission by referring to the issues framed by the Trial Court that the said issues did not indicate that any relief is claimed against these Defendants. Reference is also made to the affidavit-in-reply filed in this Petition wherein Respondents/Plaintiffs again claimed that Plaintiffs do not seek possession of encroached area by the Petitioners/Defendant Nos. 3 to 5. It is thus his contention that the Petitioners are neither necessary nor proper parties to the suit and hence, deserve to be deleted from the suit.

4. Learned Counsel for Respondents/Plaintiffs supported the impugned order by contending that the Trial Court has rightly considered the pleadings and the relief sought. It is his further submission that the stage of the suit is for recording of the evidence of the Defendants and completion of evidence of Plaintiffs. Thus, it is his submission that this is not the proper stage to entertain such application.

5. From the record though it appears that the Plaintiffs/Respondents have made statements at different stage of proceedings to the effect of not seeking relief against the Defendant Nos. 3 to 5. However, there is a prayer in the suit is against the Defendants in respect of property described in column no. 1A of the plaint, which apparently could be considered against these Defendants. Apart from this, there is statement in the plaint with regard to the alleged encroachment caused by Defendant Nos. 3 to 5 on the road. Having regard to these pleadings, it cannot be said that there is no relief claimed against Defendant Nos. 3 to 5.

6. Perusal of the statement made in Writ Petition No. 7514/2020 on behalf of Plaintiffs only indicates that in respect of construction of the Defendant Nos. 3 to 5 no relief is sought by Plaintiffs. However, in the same paragraph it is further claimed that the order is sought in respect of open space admeasuring 1250 sq. ft and possession thereof is also asked for. In the light of said averments, this Court had directed the Plaintiffs to pay Court fees on the valuation of the said portion possession of which is asked by the Plaintiffs. In the cross-examination Plaintiffs have admitted that Plaintiffs does not wish to claim the constructed portion. Pertinently, constructed portion does not necessarily include the area land admeasuring 1250 sq ft. as indicated in the order passed by this Court, in the earlier Petition.

7. In any case, now the suit is at the stage of evidence of the Defendants after the evidence of Plaintiffs is over. The suit is of year 2015. This Court, therefore, finds no purpose in entertaining in Petition and directing the deletion of name of the

Petitioners from the array of Defendants. It is however clarified that if Trial Court finds that the suit filed against these Petitioners/Defendants is without any justification, it would be open for the Trial Court to impose exemplary cost against the Plaintiffs.

8. In view of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)