



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

10 WRIT PETITION NO. 8716 OF 2024

Salimunbee Ismail Shaikh Kotwal & othersPetitioners

VERSUS

Gangadhar Sugriv Kochewad & othersRespondents

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Mr. M. N. Kalyane, Advocate for the Petitioners.

Mr. K. P. Rodge, Advocate for Respondent Nos. 1 and 2.

Mr. G. B. Rajale, Advocate for Respondent Nos. 3 and 4.

CORAM : R. M. JOSHI, J.

DATE : 21st APRIL, 2025.

PER COURT :

1. This petition takes exception to the order passed below Exhibit 23 in Regular Civil Suit No. 640/2022 filed by Petitioners/third party applicants to join themselves as party Defendants to the suit.

2. Petitioners claimed before the Trial Court that they are the legal heirs of the original owner of the property sold to Defendants by sale-deed dated 15.05.1993. It is sought to be claimed by the Petitioners before the Trial Court that the said transaction was not a sale transaction but was a loan transaction. On this contention, they sought to implead themselves as Defendants.

3. This application came to be opposed by the Plaintiffs by contending that the issue of Defendants' sale-deed is not involved in the suit. The suit is for injunction against Defendants from restraining them from encroaching upon the property of the Plaintiffs and for demarcation of the boundaries.

4. Learned Trial Court rejected the said application by observing that the claim sought to be made by the Petitioners is against the Defendants only and the same is not a subject matter of the suit.

5. Learned counsel for the Petitioners submits that the Petitioners being legal heirs of original owner they have every right to take exception to the nature of transaction executed by the owner in favour of Defendants. He also makes a statement that a separate suit has been filed by the Petitioners against Defendants taking exception to the sale-deed dated 15.05.1993.

6. There is no dispute about the fact that the Plaintiffs filed suit against Defendants seeking injunction against them from

causing encroachment upon their land. Similarly, the other issue involved in the suit is about demarcation of these two properties. In such circumstances, question of Trial Court going into the issue of genuineness of the transaction between Defendants and present Petitioners does not arise. Though it may be open for the Petitioners to take exception to the said transaction in an independent proceeding as provided by law, however, they cannot become necessary and proper party to the present suit. Hence, rejection of application Exhibit 23 cannot be interfered with. As a result of this, petition stands dismissed.

(R. M. JOSHI)
Judge

dyb