



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

WRIT PETITION NO. 13829 OF 2024

**GURUNATH RAMA RATHOD
VERSUS
RAMCHANDRAHULAJI DHOND AND OTHERS**

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Advocate for the Petitioner : Mr. Rodge Krishna Pratap

Advocate for Respondent No.1 : Mr A.N.Sabnis

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CORAM : SHAILESH P BRAHME, J.

DATE : 25th FEBRUARY 2025

PER COURT :

1. Heard learned counsel Mr. Rodge for the petitioner and Mr.Sabnis for respondent no.1. Respondent nos. 2 and 3 are served. They are original defendants. The respondent no.1 is the contesting party who is original-plaintiff.

2. Petitioner is assailing order dated 28.11.2024 below Exhibit-21 passed by learned Civil Judge Junior Division, Udgir in R.C.S No. 1081 of 2022 rejecting application under Order 1 Rule 10 of C.P.C.

3. The respondent no.1 has filed R.C.S No.1081 of 2022 for injunction against respondent nos. 2 and 3 in respect of land gut no.33 measuring 1H 50 R situated at Dhondwadi, Tq.Jalkot, Dist.Latur for injunction. Petitioner filed application Exhibit-21 seeking intervention in the suit and his impleadment. It is contended

that he is the purchaser of 4 R of suit land vide unregistered document dated 15.08.2003 executed by respondent no.1 and his brother Bhanudas. He is alleged to be in possession of 4R land. It is alleged to have been attempted to be grabbed by the respondents. Hence, he is necessary and proper party to the suit.

4. By impugned order dated 28.11.2024, application Exhibit-21 is rejected.

5. Learned counsel Mr. Rodge for the petitioner submits that for deciding suit of injunction, possession is the relevant factor and not the title of the land. By unregistered document, petitioner is in possession of 4 R land forming part of said suit land and therefore he has interest in the suit land. It is submitted that grave prejudice would be caused if suit is decreed and injunction is clamped against entire land of gat no.33. It is vehemently submitted that no prejudice would be caused to the respondent no.1. Respondent nos. 2 and 3 are the relatives of the petitioner and despite knowledge of transaction dated 15.08.2003, deliberately petitioner has not been made party to the suit. It is further submitted that it is a collusive suit and if it is decreed then the possession of the petitioner would be in danger and it would be very difficult to defend it. It is submitted that petitioner is proper as well as necessary party as an interest is created in the suit land to the extent of 4 R.

6. Per contra, Mr. Sabnis learned counsel appearing for

respondent no.1 submits that relief of injunction is a relief in *personam* and not relief in *rem*. There was no cause of action against the petitioner. It is vehemently submitted that the petitioner is neither owner nor in possession of alleged 4R of land. Unregistered document is not admissible in evidence and even for collateral purposes, it cannot be overlooked into. To buttress the submission reliance is placed on the judgment of Supreme Court in the matter of **K.B.Saha and Sons Private Limited vs. Development Consultant Limited** reported in (2008) 8 SCC 564.

7. I have considered rival submissions of the parties. The suit filed by respondent no.1 is for injunction simpliciter. The plaint does not show any cause of action against the petitioner. It is the prerogative of the respondent no. 1 who is the plaintiff against whom suit is to be filed and the relief to be claimed. Respondent no. 1 is the *dominus litis* of the suit. The relief of injunction is relief in *personam*. The trial court is justified in holding that there is no cause of action against third person.

8. In the impugned order much emphasize is laid on the fact that petitioner founded his claim on unregistered document. So far as ownership and possession of the petitioner to the extent of 4 R land is concerned, if he is confronted with any obstacle or impediment then he will have independent cause of action. Even if suit is decreed, petitioner is entitled to sue on independent cause of action to the extent of 4 R land. If the respondent no. 1 has no grievance or cause

of action against him in the present suit, he cannot be compelled to implead him as a party defendant.

9. In a given situation the petitioner cannot be said to be proper and necessary party in suit for injunction simpliciter. The revenue record does not corroborate his claim. I do not find any perversity or patent illegality in the impugned order. Learned Judge has taken plausible view. No interference is called for.

10. I have recorded that respondent no. 1 is the master of his suit and is the best person to decide the relief to be claimed and parties to be impleaded to his suit. Therefore, whether any prejudice is caused to the respondent no. 1 or not in impleading the petitioner in the suit is inconsequential. At the cost of repetition, I hold that petitioner is not remediless and is entitled to protect his possession, *albeit* as is permissible in law.

11. Writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

vsj..