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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10023 OF 2024

Mukund Shankarrao Pawar

... Petitioner

V/s.

Sanjay Dhondiram Gaikwad & Anr.

... Respondents

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Mr. Dilip Bodake for the petitioner.

Mr. Kuldeep U. Nikam for the respondents.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2025

P.C.:

1. The petitioner is the original plaintiff in a suit filed for possession from the licensee, in whose favor the petitioner had executed a registered leave and license agreement. According to the petitioner, the defendant failed to pay the agreed license fees, which, according to the plaintiff, entitled him to terminate the agreement and file a suit for possession as per Section 24 of the Maharashtra Rent Control Act, 1999, which governs leave and license agreements.

2. In the said suit, the respondent No.2, claiming to be the petitioner's brother, filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, contending that the land and building are exclusively owned by him. Respondent No.2 has further alleged that the plaintiff lacks the locus standi to seek possession, as the suit property does not belong to the plaintiff.

3. The Trial Court, by the impugned order dated 10th April 2024, allowed the application under Order I Rule 10, directing the inclusion of respondent No.2 as a party defendant to the suit. This order is the subject matter of the present challenge before this Court under Article 227 of the Constitution of India.

4. The Supreme Court in *Mumbai International Airport Private Limited v. Regency Convention Centre & Hotels & Ors.*, reported in **AIR 2010 SC 3109**, has laid down the parameters to decide the width and scope of Order I Rule 10 of the Code of Civil Procedure, 1908. The Supreme Court held that the plaintiff, being dominus litis, has the discretion to determine the parties to the suit. While exercising jurisdiction under Order I Rule 10, the Court must ensure that the inclusion of a party is necessary for a complete and effective adjudication of the dispute. It further held that a person claiming a right in the suit property must demonstrate that his presence is necessary for the adjudication of the issues involved in the suit. In paragraph 24, the Supreme Court emphasized that unless such a person proves that he is a necessary party, he cannot compel the plaintiff to implead him as a defendant. Additionally, it was clarified that a decree passed in such a suit would not be binding on the third party who is not a party to the proceedings.

5. In the facts of the present case, the relief sought by the petitioner is solely against the licensee for possession of the premises. Respondent No.2's claims regarding ownership of the suit property are independent of the relief sought in the suit and do not form part of the lis. Accordingly, any adjudication made by the Trial Court in relation to the petitioner's ownership shall not

bind respondent No.2. It is clarified that respondent No.2 retains the right to agitate his claims regarding ownership, title, and interest in the suit property through independent proceedings, uninfluenced by the outcome of the present suit.

6. On perusal of the plaint, written statement, and the application filed by respondent No.2 under Order I Rule 10, it is evident that the presence of respondent No.2 is not necessary for the adjudication of the dispute between the petitioner and the licensee. The issue of possession, as raised in the suit, can be effectively resolved without respondent No.2 being a party. Hence, respondent No.2 cannot be termed a necessary party within the meaning of Order I Rule 10(2) of the Code of Civil Procedure, 1908.

7. As regards the question of respondent No.2 being a proper party, it is well-settled law that the plaintiff has the autonomy to decide the parties to the suit, being dominus litis. The Court cannot compel the plaintiff to implead any person as a party against his wishes unless such impleadment is indispensable for a complete adjudication of the suit. The principle laid down in ***Mumbai International Airport Private Limited (supra)*** squarely applies to the facts of this case. Therefore, the Trial Court erred in directing the inclusion of respondent No.2 as a party-defendant.

8. For the reasons stated above, the impugned judgment and order dated 10th April 2024, passed by the learned 6th Joint Civil Judge Senior Division, Satara below Exhibit-10 in Special Civil Suit No.310 of 2023, is quashed and set aside. The application filed by

respondent No.2 under Order I Rule 10 of the Code of Civil Procedure, 1908, stands rejected. However, it is clarified that this order shall not preclude respondent No.2 from pursuing his claims regarding ownership, title, or interest in the suit property through appropriate legal proceedings.

9. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)