

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

WRIT PETITION NO. 10493 OF 2022

Ashok S/o Babarao Patil,
Age : 43 Years, Occu. : Agril.,
R/o Balapur, Tq. Dharmabad,
Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Collector,
Collector Office, Nanded.
2. The Additional Collector,
Collector Office, Nanded.
3. The Sub Divisional Officer,
S. D. O. office, Dharmabad,
Tq. Dharmabad, Dist. Nanded.
4. The Tahsildar,
Tahsil Office, Dharmabad,
Tq. Dharmabad, Dist. Nanded.
5. The Superintendent of Police,
S. P. Office, Nanded.
6. The Police Inspector,
Police Station, Dharmabad,
Tq. Dharmabad, Dist. Nanded.
7. The Superintendent of Land Record,
Collector Office, Nanded.
8. The Deputy Inspector of Land Record,
Dharmabad, Tq. Dharmabad,
Dist. Nanded.
9. T. Somaiah S/o Late Shri T. Ramlu,
Age : 56 Years, Occu. : Assistant Commissioner
Telangana Trust Charitable and Hindu

Religious Institution and Endowment
Department, Nizamabad,
Dist. Nizamabad (Telangana State).

10. Akkam Kishan S/o Akkam Madari,
Age : 50 years, Occu. : Agri.,
R/o Nilamandal, Ranjal,
Dist. Nizamabad (Telangana State) .. Respondents

Shri Shailendra S. Gangakhedkar, Advocate for the Petitioner.
Shri K. B. Jadhavar, A.G.P. for the Respondent Nos. 1 to 8.

CORAM : SANDEEP V. MARNE, J.

DATE : 11TH OCTOBER, 2022.

JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties matter is taken up for final hearing.

2. Whether the principle of Plaintiff being *dominus litus* of his suit can be stretched to such an extent that it will circumscribe the power of a court to add a defendant is a short issue that arises in the present Petition.

3. Petitioner takes exception to the order dated 21.06.2022 passed by the Civil Judge Senior Division, Biloli on application below Exhibit 30 in R.C.S. No 209 of 2021. By that order application filed by the proposed defendant Nos. 9 and 10 to add them as defendants has been allowed.

4. Shorn of unnecessary details, the facts of the case are that Petitioner is the plaintiff in Regular Civil Suit No. 209 of 2021 filed in the Court of Civil Judge Senior Division, Biloli, Dist. Nanded. Suit is filed for injunction simplicitor to restrain the

defendants not to interfere in his peaceful possession over the properties described in the plaint. The plaintiff arrayed eight different Government officers as defendants to the suit. It is averred in the plaint that petitioner's mother's name was mutated to the land at Sy. Nos. 105/2, 104, 96, 97, 105/1 and 103 situated at Balapur, Tq. Dharmabad, Dist. Nanded. The 7/12 extract shows that the property stands in the name of Shriram Mandir Devasthan Nila and in the other rights column, the name of Devasthan Inam Archak Malatibai @ Nirmalabai (plaintiff's mother) is recorded. Upon death of his mother, he has succeeded to rights in respect of that property on the strength of will executed by his mother.

5. It is further averred in the plaint that one trust in the name and style "Shriram Temple Devasthan, Nila," is registered by one Mr. G. Rahu and others in the month of June 2020 and the suit properties were shown to be the trust properties. That the said trust does not have any right, title or interest over the suit properties. It is further averred that some unknown persons claiming to be trustees of that trust were filing applications to dispossess the plaintiff from the suit properties. This is the cause of action disclosed for institution of suit.

6. However when the suit was filed, the petitioner did not implead the trust or the trustees who claimed right, title and interest in the suit properties or at whose behest his possession was sought to be disturbed. He chose to array only the revenue and police officials as defendants to the suit.

7. This led to filing of an application by T. Somaiah and

Akkam Kishan in plaintiff's suit under the provisions of Order I Rule 10(2) of the Code of the Civil Procedure (for short "Code") for adding them as defendants. The application was resisted by the plaintiff-petitioner. By the order impugned in the present petition, the Trial Court has proceeded to allow the application directing addition of those applicants as defendant Nos. 9 and 10.

8. Appearing for the petitioner Mr. Gangakhedkar the learned counsel would submit that the plaintiff's suit is for injunction simplicitor and that no declaration is sought in the suit. Since injunction is sought only against eight original defendants, those defendants alone would be bound by any order/decree that will be passed in the suit. That Plaintiff cannot be forced to file suit against persons, against whom he does not desire to claim any relief. In such a situation, respondent Nos. 9 and 10 cannot insist themselves to be added as party defendants. Mr. Gangakhedkar would submit that only in the event of petitioner-plaintiff claiming any declaration of title in the suit that the respondent Nos. 9 and 10 could possibly have themselves impleaded in the suit.

9. In support of his contention, Mr. Gangakhedkar relies upon the decisions of this Court in the case of **Ramesh Shama Kumbhar and another Vs. Sudhakar Budha Kumbhar and others** reported in **2013 BCI 554** and **Leticia E. Dos M. Simoes Vs. Suresh Tukaram Shirodkar and another** reported in **2022 SCC Online 491**.

10. Considering the order that I propose to pass, I do not consider it necessary to issue notices to respondent Nos. 9 and

10. Mr. Jadhavar, learned Assistant Government Pleader appearing for the respondent/State has opposed the petition.

11. After going through the plaint, it is apparent that specific averments are made therein that 'some unknown persons' attempted to dispossess plaintiff from the suit property. Relevant portion in para No. 16 of the plaint is reproduced hereinbelow:

"Some unknown person without any cause or reason alleging them to be the Trustees of the Shrirama Temple Devasthan, Nila, are filing false and illegal applications and claiming to dispossess the plaintiff through the defendants from the suit property."

12. The plaintiff has also made specific averments about the trust of the respondent Nos. 9 and 10 not having any rights over the suit property. Following is the averment to that effect in para No. 16 of the plaint:

"The suit property has nothing to do with the so called trust. The said trust never came in existence by adopting any due process of law or with due consent of the plaintiff or his mother. The said trust is also not registered under the provisions of the Bombay Public Trust or within the jurisdiction of Nanded. Hence not creates any rights over the suit property against the plaintiff."

13. From the averments of the plaint, it is clear that the plaintiff had full knowledge of registration of the trust and also of the fact that the trust and its trustees were claiming right, title and interest in the property and were filing applications for taking over possession of the same. Despite acquisition of this knowledge, he appears to have deliberately arrayed only revenue

and police officials as defendants to the suit. Admittedly, the original eight defendants (revenue and police officials) are not claiming any right, title or interest in the suit property, nor are seeking to dispossess plaintiff in pursuance of any right claimed by the Government in the suit property. They are concerned either with maintenance of revenue entries or may assist in execution of lawful orders passed by the Courts and the authorities.

14. The question that arises is why the plaintiff chose to file suit only against the Government officials despite having full knowledge of rights being claimed by the trust and the trustees in the suit properties? The action appears to be deliberate one so as to secure a decree of perpetual injunction behind the back of the persons/trust claiming interest in the property. The suit appears to have been cleverly drafted by intentionally avoiding to implead the trust or its trustees. The Revenue and Police officials may not seriously contest plaintiff's suit for lack of any *lis* between them and plaintiff. Plaintiff cannot be permitted to seek decree against persons not claiming any rights in the suit property and then possibly use it to protect his possession by relying upon the same before the revenue and police officials. The trial court has filled in the gap by directing addition of Respondent Nos. 9 and 10 after being satisfied that their present is necessary for deciding the issues effectively.

15. No doubt, the suit is for injunction simplicitor and the order of injunction would not be binding on respondent Nos. 9 and 10, if they were not to be added as party defendants. Mr. Gangakhedkar has strenuously submitted that the decree passed

in the suit would not be binding on respondent Nos. 9 and 10, who can have their own remedies open against the plaintiff for claiming their own right, title or interest. In my opinion, this course of action would only result in multiplicity of proceedings. The course of action suggested by Mr. Gangakhekar would result in trial of plaintiff's suit in absence of Respondent Nos. 9 and 10 and then filing of another suit by Respondent Nos. 9 and 10 to claim their own rights. The Trial Court, in my opinion, has correctly avoided this situation by adding Respondent Nos. 9 and 10 to plaintiff's suit so that the competing claims of both the sides would be decided in one proceedings.

16. The source of power of the Court to add parties is traceable to provisions of Order I Rule 10(2) of the Code which reads thus :

Order I Rule 10

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

17. There can be no dispute about the proposition that the plaintiff is *dominus litis* of his own suit. It is his choice to seek injunction only against the persons he chooses. This is well settled proposition of law and needs no reiteration. It may be profitable to refer to the judgment of Apex court in **Mumbai**

International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. reported in **(2010) 7 SCC 417** in this regard:

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties.”

18. Further discussing the scope of Order I Rule 10 (2) of the Code, the Apex Court has held as under:

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either *suo motu* or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

19. The provisions of Order I Rule 10(2) of the Code are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the court may, at any stage of the proceedings order that the name of any party, who ought to have been joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to

enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

20. The theory of *dominus litis* cannot be overstretched in the matter of impleading of parties, which results in ineffective decrees being passed in absence of necessary parties or where the theory is misused to deliberately obtain decree against non-interested persons/officials and then use it to assert rights of Plaintiff. It is also for the Court to ensure that the real matter in dispute is effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. If the Court feels it appropriate that any particular party's presence is necessary before the Court for adjudicating upon the issue involved in the suit, the Court has full power under Order I Rule 10(2) of the Code to direct addition of such party to the suit.

21. In the present case, the Trial Court has arrived at a finding that in order to determine real interest of the plaintiff in the suit properties, the persons related to the trust need to be added as parties to the suit. It is held that their presence is must to decide the relief claimed by the plaintiff in the suit properties. In my opinion the Court was otherwise empowered to direct addition of Respondent No. 9 and 10 on its own motion, without there being any application. It is the court's discretion to decide whose presence is necessary to effectively decided the issued involved in the suit. I do not find that the Court has committed any error in recording these findings.

22. Plaintiff's prayer for perpetual injunction cannot be decided without ascertaining the rights claimed by the respondent Nos. 9 and 10 in respect of the suit properties. Therefore, their presence is utmost necessary for determining the real question and controversy involved in the suit. In my opinion therefore the Trial Court has rightly directed addition of respondent Nos. 9 and 10, so that claims of possessory rights over the properties raised by both the sides can be decided in one suit.

23. The judgments of this Court in **Ramesh Shama Kumbhar** (supra) and **Leticia E. Dos M. Simoes** (supra) relied upon by Mr. Gangakhedkar are rendered in facts of those cases and would have no application to the peculiar facts of the present case as discussed above.

24. Consequently, I find that the petition is devoid of merits. The same is dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22