

Order below Exh. 60 in RCS 37/2012

1. The defendants No. 1 to 5 have filed this application with a prayer to reject or return the plaint to the plaintiffs for non-joinder of necessary party. The defendants No. 1 to 5 contended that, the State Government of Maharashtra has given the suit property to Narsing Laxman Bhil. Thus, the State Government of Maharashtra is necessary party to the suit. However, the plaintiffs have not joined the State Government as a party to the suit. Therefore, the plaint may be rejected or returned to the plaintiffs for non-joinder of necessary party.

2. The plaintiff's have filed say (Exh. 63) and opposed the application. The plaintiff's contended that, plea of non-joinder of necessary party is not tenable under order 7 rule 11 of C.P.C. The defendants have filed this application with intent to prolong the trial. Plea raised by the defendants is based on disputed facts of both the parties and it requires adjudication under order 14 of the C.P.C. The defendants are trying to prolong the hearing of application for interim relief, with a view to get time to alienate the suit property. Therefore, the application may be rejected with compensatory costs.

3. Heard both sides at length. Peruse pleadings of the suit and written statement. The plaintiffs have filed the suit for partition, possession,

declaration and injunction. It is pertinent to note that the plaintiffs have not claimed any relief against the State Government of Maharashtra.

4. Admittedly, the suit property was allotted by the State Government of Maharashtra to deceased Narsing Laxman Bhil. Therefore, it is necessary to take permission of the collector before transfer of the suit property. The collector at Dhule has granted permission for acquisition of the suit property for the project of production of electricity.

5. The defendant No.6 company has started to purchase land situated at Village Vikharan for the project of production of electricity at Village Vikharan. The plaintiffs and the defendants No. 1 to 5 are relatives of deceased Narsing Laxman Bhil. The suit properties are in the name of the defendant No.1.

6. It is necessary to point out that the defendant No.1 to 5 have filed this application under order 7 Rule 11 of C.P.C. Plea of the defendants that plaint may be rejected or returned on the ground of non-joinder of necessary party can not be taken into consideration under order 7 Rule 11 of C.P.C. Plea raised by the defendants is based on disputed facts of both the parties and it requires adjudication under order 14 of the C.P.C. by framing issues.

7. During the course of argument the learned counsel of the

defendants relied upon following case law:-

Jagtu

Vs

Suraj Mal & Ors.

Reported in AIR 2010 SUPREME COURT 3490.

In this case, declaration was sought by way of suit about the land belonged to the State of Haryana. Trial court has framed issue of non-joinder of necessary party and after trial the suit was dismissed. The first appellate court reversed the findings of trial court. The Hon'ble High Court has affirmed the judgment and findings of the appellate court and dismissed the second appeal. The Hon'ble Supreme Court has set-aside the judgment and findings of the first appellate court and the Hon'ble High Court and held that the State Government Haryana was a necessary party to the suit. The suit, therefore, could not proceed for want of necessary parties.

8. In the case on hand, as discussed above, the suit property was allotted by the State Government of Maharashtra to deceased Narsing Laxman Bhil. The collector has given permission for acquisition of the suit property for the project of production of electricity. The plaintiffs have not claimed any relief against the order of the collector or the State Government of Maharashtra. Moreover, issues under order 14 of C.P.C. are yet not framed. Plea of non-joinder of necessary party can not be considered under

order 7 Rule 11 of C.P.C. Therefore, with due respect the aforesaid case law is not applicable to the case on hand.

9. In the light of above discussion, it becomes clear that, the application is de-void of any merit and deserves rejection. In the result, I pass following order :-

Order

Application is rejected.

Date :- 10/10/2013

(Suraj V. Kendre)
Civil Judge, J.D. Dondiacha