

Bombay High Court

Smt. Gopikabai Nathuram Malekar ... vs Bapurao Mahadeorao Surkar on 21 September, 1994

Equivalent citations: (1995) 97 BOMLR 837

Author: R Lodha

Bench: R Lodha

JUDGMENT R.M. Lodha, J.

1. Smt. Gopikabai w/o Nathuram Malewar and Smt. Mirabai w/o Gangaram Waghmare who have filed Civil Suit No. 29/90 in the Court of Small Causes Court, Nagpur against Non-applicant-defendant who have preferred this revision application under Section 115 of Civil Procedure Code (for short C.P.C.) dissatisfied with the order dated 8-4-1991 passed by Small Causes Court, Nagpur allowing the defendant's application for impleading Barmadin Dubey as one of the defendants in the suit

2. The plaintiffs admittedly have filed a suit for possession, arrears of rent and damages against the Non-applicant Bapurao. The defendant moved an application under Order I, Rule 10(2) C.P.C. stating therein that one Barmadin Dubey is necessary party in the present suit because one Balaji Shrawan Dandekar had during his life time executed an agreement to sell in regard to the disputed property in favour of one Barmadin Dubey and the said Barmadin Dubey had filed suit for specific performance of contract which is registered at Civil Suit No. 14/85 and is pending trial before the 6th Joint Civil Judge, Junior Division, Nagpur. The defendant thus prayed that Barmadin Dubey is necessary party in the present suit, and, therefore, he should be impleaded as Defendant No. 2.

3. After perusing the application under Order I, Rule 10 (2) of C.P.C. filed by the defendant Bapurao and the order passed by Small Causes Judge, Nagpur on 8-4-1991, I am of the opinion that the said Court committed serious error of jurisdiction in allowing the application filed by the defendant and directing Barmadin Dubey to be impleaded as party in the suit for possession filed by the plaintiffs. Ordinarily plaintiff is dominus litis and it is for the plaintiff to pray for the reliefs against the particular party and in the present case, the suit being for possession and property in question being in possession of Bapurao, the plaintiffs have filed the suit against defendant Bapurao. So far as Barmadin Dubey is concerned, merely because an agreement to sell has been executed by Barmadin Dubey, it cannot be said that any title has been created in favour of Barmadin Dubey regarding the property in question. Agreement to sell does not create any title under law. There was no cause of action against Barmadin Dubey and Barmadin Dubey, in the facts and circumstances, is neither necessary, nor proper party. Stranger to the litigation cannot be impleaded as a party at the instance of the defendant. Presence of Barmadin Dubey is not at all necessary for the determination of the real matter in dispute.

4. In this view of the matter, the order dated 8-4-1991 passed by Small Causes Judge, Nagpur, cannot be sustained and is consequently set aside. The application filed by the defendant under Order I, Rule 10 (2) of C.P.C. is dismissed.

5. Consequently, this revision application is allowed and the order dated 8-4-1991 impugned in the present revision application is quashed and set aside. No order as to costs.