

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

WRIT PETITION NO.9940 OF 2013

Sukdeo Giridhar Sanap
Age 69 years, Occu. Pensioner,
R/o Ganesh Nagar, Jalgaon,
District Jalgaon

.. Petitioner

Versus

1. Ajay Shantilal Lalwani,
Age 48 years, Occupation
Business, Agriculture,
R/o 86, Jainagar, Jalgaon
2. Anil Vijaykumar Kotecha,
Age 47 years, Occupation
Business, Agriculture,
R/o Ajay Colony, Ring road,
Jalgaon
3. Smt. Suvarna Sanjay Sanap,
Age 42 years, Occupation
Household
4. Miss Sayali Sanjay Sanap,
Age 20 years, Occupation
Education
5. Master Pratik Sanjay Sanap,
Age 10 years, Occupation
Education
(Respondents No.4 and 5 are
minor, Resp.No.3 is the natural
guardian as their real mother)
R/o of Respondent No.3 to 5
C/o Shri Eknath Shivram Ghuge,
Near Rameshwar Colony,
Rickshaw stop, Mehrun, Jalgaon
District Jalgaon
6. Mrs Suman Sukdeo Sanap,
Age 64 years, Occupation
Household, R/o 16, Ganesh
Nagar, Sindhi Colony, Ring road,
Jalgaon, District Jalgaon

.. Respondents

Mr M.M. Bhokarika, Advocate for petitioner

Mr P.S. Shendurnikar, Advocate for respondents No.1 and 2

Mr S.A. Pradhan and Mr Vinod Patil, Advocates for respondents 3 to 5

CORAM : N.W. SAMBRE, J.**DATE : 20th November 2015****PER COURT**

Heard.

2. The application Exh.21 in Special Civil Suit No.110 of 2012, suit for specific performance preferred by a stranger came to be rejected by the impugned order dated 8th August 2013 by the 6th Joint Civil Judge, Senior Division, Jalgaon, as such present petition.

3. Mr Bhokarikar has made two fold submissions (a) that in view of income tax return 1988-1989 of the petitioner, the property in question though was purchased in the name of his late son Sanjay, however, same was out of the income derived from the joint family property and as such, the suit property is a joint family property, (b) that petitioner has already initiated the suit against the legal representatives of his son claiming that they are not entitled to deal with the property in question in any manner i.e. by sale, mortgage, as the said property is a joint family property.

4. Learned Trial Court, after considering the submissions was pleaded to dismiss the said application.

5. Mr Bhokarikar, learned Counsel for the petitioner, in support of above referred submissions, has relied upon the judgment of Apex Court in the matter of **Vidur Impex and Traders Pvt. Ltd., and ors. Vs. Tosh Apartments Pvt. Ltd., and ors., reported in AIR 2012 SC 2925(1)** so as to submit that the parameters, as are laid down in the said judgment governs case of the present petitioner. He has place reliance upon the

parameters laid down in the said judgment in paragraph 36, which read thus:

“36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment etc;

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

6. While countering the above referred submissions, learned Counsel for respondents would submit that Section 19 read with Section 16 of the Specific Relief Act which will govern the issue, in the suit for specific performance which is canvassed before the trial Court. According to him, the petitioner, if claims to have title to the suit property, he has his own remedy. He cannot encroach upon the right of the plaintiffs to the suit property which is for specific performance. He has placed reliance upon the judgment of Apex Court in the matter of **Kasturi Vs. Iyyamperumal and ors.**, reported in **AIR 2005 SC 2813 (1)**. He has invited attention of this Court to paragraphs 8, 9, 10 and 14 of the said judgment so as to canvass that the stranger like the petitioner cannot be permitted to enter into the suit as a party-respondent.

7. Having bestowed my anxious thoughts over the rival submissions, it is required to be noted that the petitioner herein claims to be father of deceased Sanjay whose legal representatives are defendants to the suit for specific performance. The suit is based on an agreement of sale executed by deceased Sanjay in favour of plaintiff and as such, after his death, his legal representatives are impleaded as defendants. The petitioner herein claiming to be father of deceased Sanjay has already filed suit for declaration and injunction against the legal representatives of deceased Sanjay which is

pending adjudication. Though he has raised a plea that the suit property belongs to joint family, however, he is required to establish the same by an independent method and not by encroaching in the suit for specific performance filed by the respondents. The law laid down by the Apex Court in the matter of Kasturi Vs. Iyyamperumal (cited supra) is required to be adhered to. Said judgment is delivered Division Bench of Apex Court with strength of more Judges than the one delivered in the matter of Vidur Tosh Apartments Pvt. Ltd. (cited supra) laying down the principles which would govern the disposal of application for impleadment of the party, In my opinion, paragraph 14 of the earlier judgment i.e. Kasturi Vs. Iyyamperumal will govern the field directly.

8. Learned trial Court, in my opinion, has rightly inferred that since the petitioner is required to establish his title to the property, he cannot be impleaded as party to the suit for specific performance.

9. In my opinion, I do not see any material illegality in the order passed by the Court below.

10. As such, the writ petition fails, stands dismissed.

11. It is made clear that the petitioner will be at liberty to take appropriate steps, if so required for clubbing the matters, which are initiated by him and the one initiated by the respondent.

(N.W. SAMBRE, J.)

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