

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 653 OF 2014

MRS. MARIA DE SA AND 5 ORS., ... Petitioners

Versus

MINGUEL DE SA (DEC) AND 20 ORS., ... Respondents

Shri Valmiki Menezes, Advocate for the Petitioners.

Shri Joaquim Godinho, Advocate for the Respondent Nos. 3 to 6 and 20.

CORAM:- C. V. BHADANG, J.

DATE:- 8th SEPTEMBER, 2015.

ORAL ORDER:

The petitioners are the defendants in Regular Civil Suit No. 680/10/II (new) (old Special Civil Suit No. 39/2003/A), on the file of the learned Civil Judge Senior Division, Margao. That was a suit for partition and separate possession, in which a preliminary decree is passed on 30.05.2007 and proceedings for partition by metes and bounds, is pending before the Trial Court.

2. The petitioners filed an application therein, seeking impleadment of one Mr. Lalji Saroj, as a party-defendant, on the ground that during the pendency of the suit, by a Deed of Sale dated 12.01.2009, the plaintiff no. 1 namely, Mr. Minguel De Sa sold plot 'D' admeasuring 338 square metres to the proposed defendant-Mr. Lalji Saroj. It was contended that a specific share out of the property could not have been sold, in the absence of the shares being defined by metes and bounds. It was contended that as such, Mr. Lalji Saroj would be a necessary party for determination of the controversy.

3. The learned Trial Court by an order dated 09.04.2014 has dismissed the application *inter alia* on the ground that the respondents/plaintiffs are *dominus litus* and as such, a party cannot be allowed to be joined, at the instance of the defendants, when the plaintiffs have opposed such addition. The Trial Court has placed reliance on two decisions of the Hon'ble Apex Court in the case of, **Sanjay Verma Vs. Manik Roy and Others, AIR 2007 SC 1332** and in the case of, **Sarvinder Singh Vs. Dalit**

Singh, (1996) 5 SCC 539, in order to find that such an alienation (pending the suit) would be prohibited by Section 52 of the Transfer of Property Act, 1882 (the Act, for short). In the aforesaid two decisions, the Hon'ble Apex Court has found that purchaser *pendent lite* cannot claim impleadment in view of doctrine of *lis pendens*.

4. Shri Menezes, the learned Counsel for the petitioners has placed reliance on Rule 10(2) of Order 1 of the Code of Civil Procedure (C.P.C., for short), in order to submit that the power under the said Rule is distinct from the power derived by the Court under Rule 10(1) of Order 1 of C.P.C. It is submitted that under Rule 10(2) of Order 1 of C.P.C. there is wide discretion to the Court to add any party at any stage, with or the without the application of the party, if it appears to the Court that the presence of the party is necessary, in order to effectually settle all the questions in the suit. It is submitted that the learned Trial Court has missed this aspect.

5. In the alternative, it is submitted by Shri Menezes, the learned Counsel for the petitioners that liberty may be granted to the petitioners to raise appropriate contentions before the Trial Court on the basis of Section 52 of the Act and the affidavit of Mr. Lalji Saroj filed before this Court.

6. On the contrary, it is submitted by Shri Godinho, the learned Counsel for the respondent nos. 3 to 6 and 20, that the Trial Court has found that the transfer will be subject to the principle of *lis pendens*. The learned Counsel has placed reliance on the affidavit filed by the proposed defendant, Mr. Lalji Saroj dated 31.03.2015, before this Court. It is submitted that in para 4 of the affidavit, Mr. Lalji Saroj has stated that he will not claim any particular plot and will accept any of the plots, which is allotted to his vendor/plaintiff no. 1 Mr. Minguel De Sa. It is contended that on the face of the legal position as obtaining under Section 52 of the Transfer of Property Act and the affidavit sworn by Mr. Lalji Saroj, there is no need or justification to add him as a party. It is contended that the petitioners are seeking impleadment only to gain time and to prolong the proceedings.

7. I have considered the rival circumstances and the submissions made. The only ground on the basis of which the proposed addition is sought is that the plaintiff no. 1, Mr. Minguel De Sa could not have sold the specific portion of the property in the absence of the reparation of the property/shares by metes and bounds.

8. The learned Trial Court has held and to my mind rightly so that even so far as Rule 10(2) of Order 1 of C.P.C. is concerned, there is a discretion vesting in the Court, which is evident from the use of the word 'may', therein and any such addition can be allowed only in exceptional circumstances. I have perused the impugned order and I do not find that it needs interference. It is however made clear that it would be open to the petitioner to raise appropriate contentions, as may be available to him in law, based on section 52 of the Act and the affidavit filed by Mr. Lalji Saroj. If, any such contentions are raised, the Trial Court may deal with the same and pass orders in accordance with law.

Subject to this, the Writ Petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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