

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.22550 OF 2014

Shrishailya Synthetic Mills, Ichalkaranji,]
Through its partners.] ... Petitioners/
(Orig. Plaintiffs)

Versus

Shri Jaykumar Ashok Kajve and Anr.] ... Respondents

Mr. Akshay Shinde for Petitioners.
Mr. Prashant Kulkarni with Mr. Abhijit B. Desai for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 25, 2015

P. C. :-

1. Rule. By Order dated 10/09/2014, the parties were already put to notice that this matter would be disposed of finally at the stage of admission.

2. This petition challenges the Order dated 05/07/2014, by which the learned Joint Civil Judge, Senior Division, Ichalkaranji, has dismissed the Petitioners' application seeking impleadment of Manik Dingne and Wardhaman Nagari Sahakari Credit Society Limited as Defendants in the suit. The impugned has relied upon the decision of the Hon'ble Apex Court in the case of *Kasturi Vs. Iyyamperumal and others*¹.

¹ AIR 2005 S.C. 2813

3. In January 2013, the Petitioners instituted the present suit seeking specific performance of agreement dated 27/12/2011 in respect of the suit property. It is the case of the Petitioners that in pursuance of agreement dated 27/12/2011, the Petitioners have paid to the Defendant No.1 a sum of Rs.22,41,000/-. On 14/02/2013, the Petitioners registered a notice of *lis pendens* and on 02/03/2013, necessary mutation entry no.24413 was also effected with the revenue authority. On 31/12/2013, the Defendant No.1, notwithstanding the pendency of the suit and the notice of *lis pendens*, executed agreement of sale in favour of Manik Dingne. On the same day, the said Manik Dingne is purported to have mortgaged the suit property in favour of the aforesaid Credit Society.

4. Upon the Petitioners acquiring knowledge about the aforesaid transaction, the Petitioners, on 09/06/2014, filed application under Order 1 Rule 10 of the CPC seeking impleadment of the said two parties and also under Order 6 Rule 17 of the CPC to amend the plaint for bringing on record the aforesaid subsequent events which took place during the pendency of the suit. By the impugned order dated 05/07/2014, the learned Civil Judge has dismissed the said application by observing that in a suit for specific performance, the *lis* between the Plaintiff-Purchaser and the Defendant-Vendor shall only be gone into and that there was no necessity for expanding the controversy any further. As noted earlier, the learned Civil Judge has placed reliance on *Kasturi* (*supra*) in respect of such proposition.

5. In my judgment, the impugned order dated 05/07/2014 is unsustainable and is required to be set aside. The proposed amendment merely seeks to bring on record the events which have transpired subsequent to the institution and during the pendency of the suit. The impleadment of the parties, who claim to have acquired some rights in the suit property during the pendency of the suit, is necessary to avoid multiplicity of proceedings. In the present case, the parties do not claim any independent title in themselves but rather claim title through the original Defendant No.1, who is the proposed Vendor in so far as the Petitioner-Plaintiff is concerned. The decision in the case of **Kasturi** (*supra*) was clearly distinguishable and the learned Civil Judge has erred in his conclusion that the same barred the impleadment of additional parties or amendment.

6. In the case of **M/s. Shree Kamal Constructions & Others V/s. Kamlakar Jiwan Patil & Others**², the Division Bench of this Court, in the context of the precise controversy raised in the present case and after considering the decision of the Hon'ble Apex Court in the case of **Kasturi** (*supra*) in para 13 has observed thus :-

“The learned Single Judge was, with respect, in error in coming to the conclusion that the proposed amendment would convert what was essentially a suit for specific performance into a suit on title. The case of the Plaintiffs is that conveyances that were executed after the agreement between the Plaintiffs and their vendors

² 2013 (4) AIR (Bom) R 348

were entered into by subsequent purchasers who had notice of the prior transaction. The Plaintiffs-Appellants seek a decree to the effect that subsequent purchasers must join in conveying the title to them, if the suit were to succeed. The learned Single Judge has as noted earlier recognised that if the Plaintiffs were to succeed in the suit, each one of those parties who are vendors and from whom the Plaintiffs had purchased the property and persons who derived title from such vendors will all be directed to join in so as to convey the right, title and interest in the immovable property which is the subject-matter of the agreement for sale. Once this is the position, it is impossible to conceive as to how the impleadment of those persons who claim title under the vendors of the Appellants would not be necessary parties. Again at the cost of repetition, it is necessary to note that the proposed Respondents do not claim an independent title adverse to the vendors of the Appellants but claim under the vendors. In this view of the matter, we are of the view that the learned Single Judge was in error in rejecting the Chamber Summons for amendment.”

7. Similarly, the Division Bench of this Court, in the case of ***Shri Swastik Developers and Others V/s. Saket Kumar Jain and***

Another³, again in the context of issue arising in the present case, has held that where the party proposed to be joined claims under the original Defendant (proposed vendor) in a suit for specific performance, then such a party is a necessary party in the suit for specific performance. At para 8 of the said Judgment, this Court has observed thus :-

“In the present case, the third Appellant is a necessary party to the suit for specific performance. The third appellant claims under the first appellant. The third appellant does not set up a title adverse to that of the first appellant or an independent title. Moreover, the agreement between the first and third appellants of 2 August 2008 is subsequent to the agreement dated 10 November 2005 that was entered into between the first and second appellant and the Plaintiffs. Hence, the application for amendment would not change the character of the suit for specific performance.”

8. Mr. Prashant Kulkarni, the learned Counsel appearing for Respondents, however, contended that it is necessary to hear the parties proposed to be impleaded, before any order for their impleadment is made. In this context, Mr. Kulkarni placed reliance on the decision ***Mumbai International Airport Private Limited V/s. Regency Convention Centre and Hotels Private Limited and Others***⁴.

³ 2014 (2) Mh.L.J. 968

⁴ (2010) 7 Supreme Court Cases 417

9. In my judgment, by resort to provision contained in Order 1 Rule 10 (2) of the CPC, Court may, at any stage of the proceedings, either upon or even when application of either party and upon such term as may appear to the Court to be just, order that the name of any person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, be added. Thus, it is in the discretion of the Court to add such party as may be necessary in order to enable the Court to effectively and completely adjudicate and settle all the questions involved in the suit, to be added as party Defendant. In the case of ***Mumbai International Airport Private Limited*** (*supra*), the Hon'ble Apex Court at para 22 has also observed thus :-

“Let us consider the scope and ambit of Order 1 of 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.”

10. Mr. Prashant Kulkarni, the learned Counsel appearing for Respondents, contended that the requirement of 'fair play' would mean that the party which is proposed to be impleaded as the Defendant, ought to be given notice before any order for such impleadment is made. It is not possible to accept such contention. The Court, by way of ordering the impleadment of a party, is neither condemning such party nor is it visiting such party with any civil or pecuniary consequences. In fact, the Court, as a measure of fair play, in directing the impleadment of such party, because it is possible that any final decision in the said suit may affect such party.

11. For the aforesaid reasons, the impugned order dated 05/07/2014 is set aside. The Petitioners' application dated 09/06/2014 seeking impleadment and amendment is allowed. Necessary amendment to be carried out within a period of four weeks from today.

12. Rule is made absolute to the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)