IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.789 OF 2015

Wakad Realty Private Limited]
Registered Private Limited Company]
Having registered office at 31-A, Ground]
Floor, Dr. Gopalrao Deshmukh Marg,]
Mumbai 400 026 through its Director]
Bharat Devkinand Agarwal, Age Adult]
Occupation Director, residing at B/303]
Mantri Lawns, Anand Park, Aundh,]... Petitioner
Pune – 7] (Org. Deft.No.6)

versus

1] Nakul Gangadhar Bhavsar]
Age 56 years, Occ : Service residing at]
Sachin A/12/201, Yashree Building]
Chikhali Road, Krishna Nagar]
Chinchwad, Pune 411 019]
]
1A] Sandhya Nakul Bhawsar]
R/at. Sachin A/12/201, Yashashree]..... Respondents
Building, Chikhali Road, Krishna Nagar](No.1 Org.Plaintiff.
Chinchwad, Pune 411 019.]Nos. 2 to 6 Org.Defts
] Nos. 1 to 5)
2] Popat Baban Vinode]
Age 54 years, Occupation Agriculturist]..... Deleted
Residing at Vinod Vasti, Wakad, Taluka]
Mulshi District Pune]
]
3] Raja Construction]
Partnership firm through its Partner]
Hussein Nabisab Shaikh, Age 60 years]..... Deleted
Occ : Agriculture and business, residing]
At Sampada Apartments, Narayn Peth]
Pune 411 030]
]
4] Nasir M Nadiyal]
Age 32 years, Occupation partner of]..... Deleted
Raja Constructions, residing at 133,]

Parvati Payatha, Vitthalwadi Road,]
Near Shivai Housing Society, Taj]
Jewellers, Pune 411 030]
]
5] Tapi Developers & Builders Pvt. Ltd.]
Registered Private Limited Company]
Through its registered address House]..... Deleted
No.602, DP Road, Aundh, Pune 411 007]
Through its Director Satish Laxman]
Choudhari, Age 40 years, Occ : Director]
Residing at House No.602, DP Road,]
Aundh, Pune 411 007]
]
6] Mahendra Bhaskar Bhole]
Age 40 years, Occ : Nil residing at Pankaj]..... Deleted.
Nagar, Chopada, Jalgaon]

Mr. S S Patwardhan for the Petitioner.
Mr. S S Hardikar for the Respondent No.1.
None for the Respondent No.1A though served.
Respondent Nos.2 to 6 deleted.

CORAM : R. M. SAVANT, J.
DATE : 08th October 2015

ORAL JUDGMENT

1 At the outset the learned counsel appearing for the Petitioner Shri S S Patwardhan seeks deletion of the Respondent Nos.2 to 6, who according to him, in the context of the challenge raised in the above Petition are only formal parties. The said Respondent Nos.2 to 6 are accordingly allowed to be deleted at the risk of the Petitioner. Amendment to be carried out during the course of the week.

2 None appears for the Respondent No.1A though served.

3 Rule, with the consent of the learned counsel for the parties i.e. the learned counsel for the Petitioner Shri S S Patwardhan and the learned counsel for the Respondent No.1 Shri S S Hardikar, made returnable forthwith and heard.

4 The writ jurisdiction of this Court is invoked against the order dated 31/12/2014 passed by the learned Civil Judge, Junior Division, Pimpri Court by which order the Application (Exhibit 110) filed by the Respondent No,.1 herein i.e. the original Plaintiff for amendment of the plaint came to be allowed and his wife Sandhya Nakul Bhawsar was allowed to be impleaded as Plaintiff No.2 in the suit in question being Special Civil Suit No.1684 of 2010.

5 The suit in question being Special Civil Suit No.1684 of 2010 has been filed by the Respondent No.1 herein seeking specific performance of the Agreement dated 20/09/2005. It appears that the Respondent No.1 i.e. the Plaintiff has executed a Sale Deed in favour of his wife on 21/12/2009. It is on the said basis that the Respondent No.1 filed the instant application (Exhibit 110) for the impleadment of his wife as Plaintiff No.2 as according to the Respondent No.1/Plaintiff to avoid any technical problem in prosecuting the suit it was necessary to implead his wife as Plaintiff No.2 to the suit. The cause of action for filing the suit was the execution of the Sale Deed by the Defendant No.1 to the suit in favour of the Defendant No.6 who is the

Petitioner herein which Sale Deed, according to the Plaintiff was in the teeth of the Agreement to Sale which was entered into by the Defendant No.1 in favour of the Plaintiff. The Plaintiff therefore filed the instant Application (Exhibit 110) for impleadment of his wife as Plaintiff No.2 in the suit.

6 The said application was opposed to on behalf of the Defendant No.6 on the ground that the impleadment can only be by following the procedure laid down in Order I Rule 10 of the Code of Civil Procedure, that the suit as filed by Plaintiff is not maintainable and therefore to get over the lacuna that the instant Application has been filed, that the nature of the suit would change, and lastly there was no privity of contract between the wife i.e. the proposed Plaintiff No.2 and therefore could not be impleaded as a party to the suit for specific performance.

7 The said application was rejected in the earlier round as also the application filed by the Defendant No.6 under Order VII Rule 11(a)(d) of the Code of Civil Procedure by the Trial Court by separate orders. The said orders came to be challenged by way of Civil Revision Application No.125 of 2013 and Writ Petition No.2052 of 2014 i.e. the order passed on Application (Exhibit 74) invoking Order VII Rule 11(a)(d) of the Code by way of Civil Revision Application and, the order passed on Application (Exhibit 110) for impleadment of the wife of the Respondent No.1 by way of the aforesaid Writ

Petition. The orders on the said Applications were set aside by this Court by common judgment and order dated 29/09/2014 passed in the said Civil Revision Application and the Writ Petition, and the Applications were relegated back to the Trial Court for a de-novo consideration of the same. It is on remand that the impugned order dated 31/12/2014 has been passed on the Application (Exhibit 110) as also the order of the same date i.e. 31/12/2014 passed on the Application (Exhibit 74). The order passed on the Application (Exhibit 74) is the subject matter of Civil Revision Application No.46 of 2015 which is companion to the above Writ Petition.

8 In so far as the order impugned in the above Writ Petition is concerned, the Trial Court has allowed the said Application (Exhibit 110) on the ground that the amendment is necessary for determination of the legal question in controversy and that the same would not cause any prejudice to the right of the Defendant No.6 as also the same would be helpful to determine the real controversy effectively. It is lastly recorded by the Trial Court that if the application is allowed, the Plaintiff would get opportunity to establish his right properly and effectively and that addition of Plaintiff No.2 would not affect the right of the Defendant No.6 in respect of the suit property.

9 In the process of adjudicating the said Application (Exhibit 110), the Trial Court has unfortunately not taken cognizance of Section 15 of the

Specific Relief Act which posits as to who are the parties who can seek specific performance. The Trial Court was therefore required to adjudicate the application on the said basis. The Trial Court has also not adjudicated the said Application (Exhibit 110) on the touch-stone of Section 21 and Article 54 of the Limitation Act which are germane in so far as the issue of limitation in respect of a suit for specific performance is concerned.

10 In the instant case, the cause of action for the original Plaintiff to file the suit in question is shown as in January 2010 where as the application to implead the Plaintiff No.2 has been filed in October 2013. The said two dates would therefore have a bearing on whether the wife of the original Plaintiff can be allowed to be impleaded as Plaintiff No.2 to seek specific performance of the Agreement in a suit which has been filed on the basis of a cause of action which has arisen in the year 2010. The Trial Court having not adjudicated the Application (Exhibit 110) from the said perspective, the impugned order dated 31/12/2014 would have to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the Trial Court for a de-novo consideration of the Application (Exhibit 110). On remand the Trial Court to consider the said Application (Exhibit 110) in terms of the observations made herein above. The parties may produce a copy of the instant order before the Trial Court on 26/10/2015. The Trial Court to thereafter decide the said Application (Exhibit 110) within two months of

26/10/2015. The Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.