

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3209 OF 2009

Mrs. Kumudini Chandrakant Pethkar .. Petitioner
vs.
Damu Bhivaji Jadhav (Deceased)
1a. Lilabai Damu Jadhav & Ors. .. Respondents

WITH
WRIT PETITION NO. 3199 OF 2009

Mrs. Kumudini Chandrakant Pethkar .. Petitioner
vs.
Sanjay Krishna Biniwale & Ors. .. Respondents

Mr. S. A. Pilankar i/b. Mr. Uday Warunjikar for Petitioner in both Petitions.

Mr. Rajesh More for Respondent No. 15 in WP 3209 of 2009 and for Respondent No. 1 in WP 3199 of 2009.

CORAM : M. S. SONAK, J.
DATE: 10 APRIL 2015

P.C. :-

1] Rule in both the petitions. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] As common issues arise in the two petitions, the same are being disposed of by means of common order. In fact the impugned orders in the two petitions are virtually identical except that the order in writ petition no. 3199 of 2009 arises from special civil suit

no. 1696 of 2004 and order in writ petition no. 3209 of 2009 arises from regular civil suit no. 1619 of 2004.

3] The impugned orders decline the petitioner - original plaintiff leave to amend the plaint. Mr. Pilankar, the learned counsel for the petitioner in both the petitions submitted that most of the amendments in respect of which leave was applied for, relate to events subsequent to the institution of the suit. The suit is for specific performance of agreement of sale dated 15 October 2001, which was executed *inter alia* by Sanjay Biniwale, in his capacity as developer and power of attorney holder for the original vendors. The suit was instituted in the year 2004. In the year 2007, it was realised that the said Sanjay, has purported to transfer the suit property in favour of Mr. Vijay Nathu Mirkute and Mr. Santosh Suresh Jori. Upon further enquiries, the plaintiff came to know that by a Deed of 2003, the said Sanjay, had himself purchased the suit property from the original vendors. Accordingly, amendment came to be applied for. Such amendment is necessary to avoid multiplicity of proceedings. The said amendment is also necessary to determine the real issues which arise in the suit. The amendment was applied for prior to the commencement of the trial in the suits. For all these reasons, Mr. Pilankar submitted that the impugned orders, denying leave to amend, warrant interference.

4] Mr. Rajesh More, the learned counsel appearing for the said Sanjay (defendant no. 15 and 1 in two suits), at the outset submitted that the amendment, if allowed, would change the nature of the suit. Further, relying upon the decision of the Hon'ble Apex Court in the case of *Ramesh Chandra Pattnaik vs. Pushpendra Kumari & Ors.*¹, submitted that subsequent purchaser of immovable property is not at all a necessary party in a suit seeking specific performance.

5] Having heard the learned counsels for the parties, perused the impugned orders and record, in my judgment, the impugned orders are required to be set aside. At the outset, it is to be noted that applications seeking leave to amend were made prior to the commencement of the trial in the suits. Besides, the amendments, relate mostly to events which have taken place subsequent to the institution of the suit and in fact during the pendency of the suit. The parties, whom the petitioner seeks to implead are ones, who claim title through the very vendors, who according to the petitioner had agreed to sale the suit property to them. In such circumstances, parties which are proposed to be impleaded are certainly proper parties. The joinder of such parties, would possibly reduce multiplicity. The Hon'ble Apex Court as well as this Court

1 (2008) 10 SCC 708

have held that in a suit for specific performance, there is no bar to impleadment of a party, as long as such party is not claiming or setting up any independent title. In the case of *Ramesh Chandra Pattnaik* (supra), the subsequent purchaser had applied for impleadment on the basis that he is a necessary party. Such contention was negated. However, the plaintiff who is the *dominus litus*, cannot be precluded from impleading proper parties, with a view to avoid multiplicity of proceedings. This is not a case where, if the amendment is permitted the entire nature of the suit would be altered.

6] In so far as challenge to the Deed of 2003, by which the said Sanjay has himself purported to acquire title to the suit property, leave is liable to be granted to the petitioner to challenge the same. This is because, there are already averments in the plaint that the entire transaction was being routed through the said Sanjay and the said Sanjay had in fact entered into agreements with purchasers, as attorney for original vendors.

7] At the stage of considering application for leave to amend, there is no reason to advert to the merits of the matter or the veracity of the claim put-forward.

8] Considering all the aforesaid circumstances, the impugned orders are set aside. The petitioner is granted leave to amend the complaints. This shall however be subject to the petitioner paying costs of Rs.3,000/- in each of the petitions to Mr. Sanjay Biniwale (defendant no. 15 and defendant no. 1 in the two suits), as he is represented by counsel in the present proceedings.

9] Necessary amendments to be carried out within a period of four weeks from today.

10] Rule made absolute to the aforesaid extent in both the petitions. There shall be no separate order as to costs in this petition.

11] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)