

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3916 OF 2015

M/s. Perfect Associates .. Petitioner
vs.
Kai Kalubai Changa Bhoir,
deceased Bharat Changa Bhoir & Ors. .. Respondents

Mr. S. M. Sabrad i/b. Mr. J. Sachdev for Petitioner.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

1] Not on Board. Upon production, taken on Board.

2] This petition challenges order dated 8 April 2015 made by the Civil Judge, Junior Division, Panvel, impleading the respondent nos. 10 and 11 as defendants in the petitioner's suit.

3] The learned counsel for the petitioner contends that the suit as filed is for injunction simplicitor. Accordingly, any relief granted in the said suit will be personal to the plaintiff and will not in any manner bind any other parties. In such a situation, the learned counsel for the petitioner submits that there was no question of directing impleadment of the respondent nos. 10 and 11 as defendants in the suit. Reliance is placed upon the decision of this

Court in the case of *Ramesh s/o. Shama Kumbhar & Anr. vs. Sudhakar s/o. Budha Kumbhar & Ors.*¹

4] Having heard the learned counsel for the petitioner and perused the record, in my judgment, there is no jurisdictional error in the making of the impugned order. Although, the suit is for permanent injunction simplicitor, the same is applied for on certain basis, which if accepted, will prejudice the rights of the respondent nos. 11 and 12. If the application seeking impleadment is perused, then the said respondents have made out a case that they are at least proper parties to the suit. Besides, the learned Civil Judge has exercised discretion in the matter and impleaded the said respondents by observing that their presence will facilitate the determination of issues that may arise in the suit. In such matters, it is not possible to merely go by the ultimate reliefs that may be applied for in the suit. The exercise of discretion, cannot be said to be either arbitrary or perverse.

5] This Court, in the case of *Ramesh* (supra) was concerned with the situation where the parties proposed to be impleaded were bent upon setting up some independent case by way of challenge to the sale deeds in favour of the plaintiffs in the said suit. Such is not the factual situation, in so far as the present case is concerned.

1 2013 (4) Mh. L. J. 81

Accordingly, the said decision is not applicable to the facts and circumstances of the present case.

6] This petition is accordingly dismissed. There shall be no order as to costs.

7] At this stage, the learned counsel for the petitioner states that the petitioner would like to take recourse against this order before the Hon'ble Apex Court. Accordingly, the petitioner submits that the implementation of the impugned order dated 8 April 2015 be stayed for a period of four weeks from today. There is an interim relief operating in favour of the petitioner in the trial court. The newly impleaded parties have already applied for vacation of the interim relief. Nevertheless, considering that such interim order was operating from the year 2012, implementation of the impugned order is stayed for a period of four weeks from today.

8] Parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)