

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8178 OF 2010

Bhalchandra Digambar Kulkarni

.. Petitioner

Versus

Narendra Hiralal Makwana and others

.. Respondents

Shri. Milind M. Sathaye, for the Petitioner.

Shri. R. D. Soni i/by Ram & Co., for the Respondent Nos.1 to 3.

CORAM : R.M. SAVANT, J.

DATE : 2nd SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 17.09.2009 passed by the Learned Joint Civil Judge, Senior Division, Nashik, by which order the Application Exh.32 filed by the Petitioner for being impleaded as a Defendant to the suit came to be rejected. The suit in question being Special Civil Suit No.358 of 2007 has been filed for specific performance of the contract dated 20.12.2001 against the Defendant. The Defendant had executed a Development Agreement in favour of one Surya Properties with a right to sell. The said Surya Properties in terms of the Development Agreement, wherein they had right to sell had executed a Sale Deed dated 20.04.2008 in favour of the Petitioner who is the Applicant. It seems that the said Surya Properties

had filed an Application Exh.19 for its impleadment in the said suit. The said application for impleadment was rejected on the ground that the said Surya Properties was not a necessary party as it was not concerned with the agreement of which specific performance was sought. It is on the Petitioner/Applicant acquiring ownership rights in the said property that the Petitioner filed the instant Application Exh.32 for his impleadment in the suit. The said application was opposed to on behalf of the Plaintiff on the ground that the Applicant is stranger and he is neither necessary nor proper party. The rejection of the Application filed on behalf of the Surya Properties was relied upon against the impleadment sought by the Petitioner/ Applicant. The Trial Court considered the said application and applying test laid down namely whether there is some relief which is claimed against the parties seeking impleadment and whether in the absence of the said party an effective decree can be passed, held that the impleadment of the Petitioner/Applicant is not necessary in the suit. The Trial Court has adverted to the judgment of the Apex Court in Kasturi Vs. Iyyamperumal and others reported in AIR 2005 SC 2813 and Rameshchandra Pattnaik Vs. Pushpendra Kumari & Ors in (2008) 10 SCC 708 whilst arriving at the said conclusion. It is required to be noted that one of the relief sought in the suit by way of prayer clause (c) is the relief of possession. The Petitioner/Applicant claims to be in possession on

the basis of the Sale Deed which has been executed in his favour. Hence, though the said fact is sought to be controverted on behalf of the original Plaintiffs i.e. Responent Nos.1 to 3 herein, in my view said fact assumes relevance in the context of the application filed by the Petitioner/Applicant. A useful reference could be made to the judgment of the Apex Court in Thomson Press (India) Limited Vs. Nanak Builders. and Investors Private Limited and others reported in (2013) 5 SCC 397, wherein the Apex Court was concerned with the issue of whether the transferee pendente-lite was required to be impleaded in a suit for specific performance and the Apex Court has observed that the same would be within the discretion of the Court. In my view, having regard to the facts of the present case and even though the application filed by the said Surya Properties has been rejected, but having regard to the Sale Deed which is executed in favour of the Petitioner/ Applicant though pendente-lite, the presence of the Applicant in my view would be necessary for a complete and effectual adjudication of the suit, so that an effective decree could be passed. The impleadment of the Applicant can therefore be said to satisfy the principles which are laid down whilst considering the application under Order 1 Rule 10 of the CPC. The impugned order dated 17.09.2009 is accordingly quashed and set aside and in turn, the Application Exh.32 would stand allowed. Amendment to be carried out within six weeks from

date. If there are consequential amendments qua the newly added Defendant, the same also to be carried out within six weeks from date.

2. Needless to state that the contentions of the parties including contention as to whether the Applicant is bonafide purchaser for value without notice is kept open for being urged in the suit. Since the suit is of the year 2007 and the above Petition was pending in this Court, the hearing of the suit is expedited.

[R.M. SAVANT, J]