

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7593 OF 2014**

Shri Deepak R. Rathod

..Petitioner

Vs

1.Kuwarji Bacchubhai Shah and

Ors

.. Respondents

Mr. Mohit P. Jadhav, Advocate for Petitioner.

Mr.Tarun K.Sinha , Advocate for Respondents no.1 to 3.

CORAM : R.G.KETKAR,J.

DATE : 10/12/2015

PC:

1. Heard Mr. Mohit Jadhav, learned counsel for the petitioner and Mr. Tarun Sinha, learned counsel for respondents no.2 and 3 at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as defendant no.10, has challenged the order dated 26.7.2013 passed by the learned judge, City Civil Court, Greater Mumbai in High Court Chamber Summons No.399 of 2010 in Suit No.4447 of 2009. By that order, the learned trial Judge allowed Chamber Summons taken out by respondents no.1 to 3, hereinafter referred to as plaintiffs, for impleading petitioner as party defendant.

3. Mr. Jadhav strenuously contended that the plaintiffs have instituted suit against respondents no.1 to 9 for specific performance of contract dated 12.3.2008 in respect of property, namely, Champa Niwas, bearing C.T.S. No.17, Plot No.23,

admeasuring 680.9 sq.meters. The suit was instituted on 23.9.2009. It is the case of the plaintiff that on 23.12.2009 defendants no.1 to 9 executed sale deed in favour of defendant no.10 in respect of the suit property. It is in these circumstances the plaintiffs took out the Chamber Summons for impleading defendant no.10 in the suit. By the impugned order, the learned trial Judge has allowed the Chamber Summons.

4. Mr. Jadhav submitted that defendant no.10, being a stranger or a third party to a contract, cannot be impleaded in a suit for specific performance of a contract. In support of this proposition he relied upon a decision of the Apex Court in the case of *Kasturi Vs. Iyyamperumal*, AIR 2005 SC 2813.

5. On the other hand, Mr. Sinha relied upon a decision of this Court in the case of *M/s Rukhana Enterprises Vs. M/s Ashoka Marketing Ltd*, 2010 ALL MR (Supp) 278. The learned Single Judge of this Court considered the decision of *Kasturi* (supra) as also subsequent decision of the Apex Court in the case of *Sumatibai Vs Paras Finance Co*, (2007) 10 SCC 85. He submitted that even the Apex Court in the case of *Kasturi* (supra) has held that necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor.

6. In view of the above decisions, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

7. At this stage, Mr. Jadhav submitted that defendant no.10 may be permitted to file Written Statement and reply to Motion for interim relief. He assures that on or before 15.1.2016, defendant no.10 will file Written Statement and reply to the Motion and serve copy in advance on the plaintiffs' Advocate. He further assures that defendant no.10 will not seek further extension of time for filing Written Statement and reply to the Motion.

8. In view thereof, notwithstanding dismissal of the petition, defendant no.10 is given time upto 15.1.2016 for filing Written Statement and reply to the Motion. It is expressly made clear that no further extension will be granted by this Court.

(R.G.KETKAR, J.