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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 522 OF 2015
IN
CHAMBER SUMMONS (L) No. 716 OF 2015
IN
SUIT No. 2231 OF 1986
WITH
CHAMBER SUMMONS (L) No. 1646 OF 2015

Ashok Raghunath Nikam & Ors. ... Appellants
Vs.
Padmavati Mohanlal Parekh & Ors. ... Respondents
AND
Smt. Jayashree C. Thite & Ors. ... Applicants

WITH
APPEAL (L) No. 474 OF 2015
IN
CHAMBER SUMMONS No. 89 OF 2014
IN
SUIT No. 2231 OF 1986
WITH
CHAMBER SUMMONS (L) No. 1259 OF 2015

Ashok Raghunath Nikam & Ors. ... Appellants
Vs.
Padmavati Mohanlal Parekh & Ors. ... Respondents
AND
Jitendra R. Gurav ... Applicant in NMAL
1591/2015.
AND
Smt. Jayashree Chandrakant Thite & Ors. ... Applicant in CHSL
1259/2015

Mr. C. N. Chavan, for the Appellants.

Ms. Maya Sorkar i/b Madhukar Munim & Co., for the Respondents.

Mr. Madhav Jamdar, for the Applicant in CHSL. 1646/2015.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : NOVEMBER 23, 2015

PC.

1. Appeal (L) No. 474 of 2015 alongwith Chamber Summons (L) No. 1259 of 2015 are not on board. Since both the matters are connected with the present appeal, they are taken on board and heard with this appeal.

2. We have heard the learned counsel appearing on behalf of the Appellants in both appeals, and the learned counsel appearing on behalf of the intervenors, who have filed chamber summons for intervention, which are directed to be heard alongwith the appeals. The Appellants are legal heirs of Plaintiff No. 1 and Plaintiff No. 4. On the death of Plaintiff No. 1 and Plaintiff No. 4, an application was made for bringing their heirs on record. The learned Single Judge pleased to allow that application by order dated 29.4.2015.

3. However, in the afternoon session the intervenors, who are also the promoters of the Society filed the chamber summons for intervention and sought review of the order dated 29.4.2015. It was submitted that the Plaintiff had filed the suit in the capacity of promoters of the Society, and their legal heirs, therefore, do not have

any right to pursue the litigation. Learned Single Judge accepted contention of the intervenor and recalled her earlier order dated 29.4.2015 by an order passed on 30.4.2015 and held that legal heirs of Plaintiff No. 1 and Plaintiff No. 4 do not have right to sue and the said right does not survive on the death of Plaintiff No. 1 and Plaintiff No. 4. The Appellants are aggrieved by the said order dated 30.4.2015.

4. We are of the view that learned Single Judge has committed an error of law, which is apparent on the face of the record. The Plaintiff has filed the suit for specific performance of an agreement dated 18th July, 1978. Perusal of the said agreement reveals that names of Plaintiffs are mentioned in the agreement and it is clearly stated that Promoters of Pateshwar Co-operative Housing Society Ltd. (proposed) hereinafter called “the purchasers”. It is further clarified that said expression shall, unless it is repugnant to the context or meaning thereof, be deemed to include the survivors of them and the heirs, executors, etc. Whether it is in the context or meaning of the agreement or not will have to be decided during the trial, and at this stage that question cannot be gone into. We are of the view that the order dated 30.4.2015 will have to be recalled and the order dated 29.4.2015 is revived. The Appellants are permitted to bring on record the legal heirs of Plaintiff No. 1 and Plaintiff No. 4. It will be open for the intervenors to contend that these legal heirs do not have any legal right, which is claimed by them, which contention is kept open. Both the appeals, viz. Appeal (L) Nos. 522 of 2015 and 474 of 2015 are allowed and accordingly disposed of.

5. In view of disposal of both the appeals, both chamber summons, viz. Chamber Summons (L) Nos. 1646 of 2015 and 1259 of 2015, filed in corresponding appeals, do not survive and are accordingly disposed.

Sd/-

[REVATI MOHITE DERE, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemth