

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6122/2014

Shamandas s/o Khilumal Peshwani

..Versus..

Dr. Jagdish Sukhalal Jhunhunwala and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 5.5.2015

1. Heard Shri V.K. Paliwal, the learned advocate for the petitioner and Shri Virat Mishra, the learned advocate for respondent no.1.

The respondent no.1 had filed the Regular Civil Suit No.176/2004 against the petitioner praying for decree for ejectment, possession and notice charges. The learned trial Judge by the judgment dated 15th December, 2008 granted decree in favour of the respondent no.1. The respondent no.2 has purchased the property from respondent no.1 by registered sale deed dated 10th September, 2012.

The petitioner filed Regular Civil Appeal No.15/2009 challenging the judgment and decree passed by the trial Court. The

respondent no.2 filed an application under Order I rule 10 of the Civil Procedure Code (Exh. No.14) in the appeal, praying for permission to get impleaded as the respondent in the appeal. The learned trial Judge by the order dated 2nd May, 2014 allowed the application (Exh. No.14). The petitioner had filed an application (Exh. No.42) seeking review of the order passed by the trial Court on 2nd May, 2014. The learned District Judge by the order dated 1st September, 2014 has rejected the application. The petitioner being aggrieved in the matter has filed this writ petition.

2. Shri Paliwal, the learned advocate for the petitioner has submitted that the respondent no.2 has no right to get himself impleaded as the respondent in the appeal inasmuch as the sale deed executed by the respondent no.1 in favour of respondent no.2 is void. It is further submitted that the petitioner had filed an application praying for permission to amend the written statement and the learned District Judge has not passed any orders on the application and without passing any orders on the application filed by the petitioner, the application (Exh. No.14) filed by the respondent no.2 came to be allowed. It is submitted that the order passed by the learned District

Judge permitting the respondent no.2 to get himself impleaded as the party in the appeal, is unsustainable and has to be set aside.

3. Shri Mishra, the learned advocate for the respondent no.1 has supported the impugned order. The learned advocate has submitted that the learned District Judge has rightly exercised the jurisdiction vested in him and the impugned order does not require any interference by this Court in the extraordinary writ jurisdiction.

4. After considering the submissions made on behalf of the respective parties and examining the record of the writ petition, I find that the learned District Judge has rightly recorded that the respondent no.2 has stepped into the shoes of respondent no.1 by virtue of the registered sale-deed and no prejudice would be caused to the petitioner if the respondent no.2 is permitted to come on the record of the appeal. The impugned orders do not suffer from any illegality or irregularity and it cannot be said that the learned District Judge has transgressed his jurisdiction by allowing the application (Exh. No.14) filed by the respondent no.2.

The writ petition is dismissed with costs quantified at Rs.2,000/-

(Rs. Two Thousand Only) to be paid by the petitioner to the respondent no.1 within 2 months. If the amount of costs is not paid as directed, the learned District Judge shall pass appropriate orders considering it to be non-compliance of the order passed by this Court.

JUDGE

Tambaskar.