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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2706 OF 2016

Sunandabai Dilip Patil and Others

PETITIONERS

VERSUS

Umedba @ Padmkuwar Bhimsingh Raul & Others RESPONDENTS

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Mr. Amit A. Mukhedkar, Advocate for the petitioners

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th APRIL, 2016

ORDER :

1. Heard learned advocate for the petitioners.
2. Mr. Mukhedkar, learned advocate contends that the petitioners are in possession of the property involved in regular civil suit No.184 of 2012 instituted by respondents No.1 and 2. Respondent No.1 Umedba had entered into an agreement of sale way back in 1983 with father of the petitioners and pursuant to the same, the petitioners are in possession of said suit property since then. Therefore, the petitioners had applied for impleading themselves as party defendants in said suit, having regard to Order I, Rule 10 of the Civil Procedure Code. The application Exhibit-37 so moved had been rejected under the impugned

order dated 19th October, 2015 by civil judge junior division, Nandurbar.

3. Mr. Amit Mukhedkar, learned advocate vehemently submits that the petitioners are necessary parties to regular civil suit No.184 of 2012, since they are in possession of the suit property and that any order in favour of plaintiffs therein is likely to affect the petitioners, since them being in possession. The contention of learned advocate is that the petitioners are in possession of the property since 1983 without any interruption, however, under the litigation in regular civil suit No.184 of 2012, the same is likely to come in peril, in the event the suit is decreed.

4. While the trial court had decided application Exhibit-37, it has taken into account relevant aspects involved in the matter. The trial court has considered that regular civil suit No.184 of 2012 is prior in time to the suit now instituted by present petitioners bearing regular civil suit No.19 of 2014 for specific performance of agreement of sale dated 27th August, 1983 and for injunction against respondent No.1 - defendant No.1 in said suit and plaintiff in regular civil suit No.184 of 2012. The trial court has also adverted to that no credible material in support of the averments appearing in the application had been placed on

record and even going by the averments that the petitioners' claim that they are in possession since 1983, no effort for securing legal title yet had been made by the petitioners, their impleadment does not appear to be necessary for complete and effectual disposal of regular civil suit No.184 of 2012.

5. It is the submission of Mr. Mukhedkar that any order passed in regular civil suit No.184 of 2012 is likely to directly impact legal rights of the petitioners to the suit property.

6. Mr. Mukhedkar, learned advocate refers to and relies on three citations in cases of “*Sumita Pradipkumar Dixit Vs. Pushpadevi G. Makharia and Others*” reported in 2002 (4) Bom.C.R. 249; “*Sitaram Deorao Pawar and Another Vs Rupabai Gundulal Khatri and Others*” reported in 2006 (supp) Bom.C.R and “*Esteem Properties Pvt. Ltd., Vs. Municipal Corporation of Greater Mumbai and Others*” reported in 2009 (1) Bom.C.R. 642.

7. Going by the facts, as are appearing in those citations, the facts in the present case are distinguishable and cannot be said to come anywhere close to the factual scenario in the present matter. In the circumstances, although the citations are pressed into service for the purpose of pointing out fault in the impugned order and in order to support the submission that the petitioners'

presence would be necessary for complete and effectual disposal of regular civil suit No.184 of 2012, facts involved in said cases cannot be said to be of any avail to the petitioners.

8. Apparently, such a submission may not have any sound basis in law for the reason that regular civil suit No.184 of 2012 is simplicitor for injunction, on the own saying of the petitioner. It is well known and by now well settled that injunction operates in *personam*. In such a case, injunction, even if is granted in regular civil suit No.184 of 2012, it is unlikely to affect possession so claimed by the petitioners and the decree may not be exactly said to be binding the petitioners. It is open for the petitioners to take up appropriate proceedings if decree is sought to be executed against them. The dispute *inter se* between plaintiff and the defendants in regular civil suit No.184 of 2012 can be decided in absence of the petitioners.

9. Having regard to aforesaid the decision rendered by the trial court is not amenable to any fault finding, writ petition stands rejected.

10. At this stage, Mr. Mukhedkar, learned advocate makes a request that the two suits be consolidated. It is open for the petitioners to make such a request, if so advised, before the trial

court.

11. Observations made while rejecting application Exhibit-37 would have limited efficacy confined to decision on Exhibit-37.

[SUNIL P. DESHMUKH, J.]

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