

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 321 OF 2013

SHRI. S. KUMAR @ SUNIL THUKRAL., ... Petitioner
Versus
PEROLA DO MAR CHS LTD. REP. BY
CHAIRMAN, MANAGING COMMITTEE
(SHRI.V.J. SANCTIS AND ANR) AND 3
ORS., ... Respondents

Shri Ryan Da Piedade Menezes, Advocate for the Petitioner.
Shri Anthony Joe D'silva, Advocate for Respondent No.4.

Coram:- C. V. BHADANG, J.

Date:- 15th June, 2016

ORAL ORDER :

By this petition, the petitioner who is the original plaintiff is challenging the order dated 9/11/2012 passed by the learned Civil Judge Junior Division at Mapusa in Regular Civil Suit No.168/2008/F by which an application for impleadment filed by the fourth respondent has been allowed.

2. The brief facts are that the petitioner has filed the aforesaid Civil Suit for a declaration that the judgment and decree dated 3/05/2003 passed in Regular Civil Suit No.36/2002/F is null and void. The petitioner is seeking a further declaration that the Sale Deed executed on 9/12/2005 in pursuance of the decree dated 3/05/2003 is a nullity. The petitioner is also seeking consequential relief of injunction.

3. The case made out in para 22 of the plaint, is that Mr. V.J. Sanctis, Chairman of Perola Do Mar Co-operative Housing Society Limited and Mr. V.A. Fernandes, Chief Promoter and Secretary of the said Housing Society, acting fraudulently and in collusion with one Mr. Pravin Grover (since deceased) had filed earlier Civil Suit No.36/2002 against the petitioner herein and the defendant no.2 in the said suit, seeking a mandatory injunction for execution and registration of the Sale Deed in respect of the undivided shares/rights in the suit property.

4. In Regular Civil Suit No.168/2008 M/s. Candolim Developers Pvt. Ltd. which is a private Limited Company is added as defendant no.2. The intervenor Mrs. Amita Grover claims to be the Managing Director of Defendant no.2 i.e. M/s. Candolim Developers Private Ltd. In her application filed under Order 1 Rule 10(2) of the Civil Procedure Code Mrs. Amita Grover claims that after the death of Pravin Grover she has been appointed as the Managing Director of the defendant no.2 while Mr. Baldev Raj Grover i.e. her father in law is appointed as a director. She claims that in the plaint there are serious allegations made against her husband which she proposes to meet and contest. Thus the intervention was claimed both in the capacity as the present Managing Director of the defendant no.2 as well as the widow of Pravin Grover who was earlier Managing Director of the defendant no.2 in the said suit.

5. The application was opposed on behalf of the petitioner. The learned Trial Court by the impugned order has allowed the impleadment thereby directing the impleadment of the respondent no.4, as defendant no.4 in the suit.

6. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the fourth respondent, who is the only contesting party. None appears for the other respondents.

7. The learned Counsel for the petitioner points out that the respondent no.4 in her alleged capacity as the Managing Director of the defendant no.2 can always contest the suit and for this purpose her impleadment in her individual capacity as a defendant is not necessary. Even so far as the case made out by the respondent no.4 that she wants her impleadment to contest the allegations made against her deceased husband, it is contended that the respondent no.4 has not made out a case in her application for impleadment that she has any personal knowledge of the affairs of her deceased husband. The learned Counsel points out that the impugned order lacks a finding as is required under Order 1 Rule 10 (2) of the Civil procedure Code, namely the presence of the said party being necessary to enable the Court to completely and effectually decide the controversy in question. He, therefore, submits that the impugned order demonstrates jurisdictional error which needs to be corrected. It is submitted that the respondent no.4 has not shown any

personal interest in the subject matter of the suit. The learned Counsel has placed reliance on the decision of this Court in MARIA EMILIA BARRETO MASCARENHAS V/S. SUSHMA RUZAR FERNANDES reported in (2006) 0 Supreme (Mah) 41 and P.M.A. HAKEEM, CHAIRMAN, MAHARASHTRA STATE ROAD TRANSPORT CORPORATION & ORS. V/S. U.P. CO-OPERATIVE SPINNING MILLS FEDERATION LIMITED & ORS. reported in (2002)) Supreme (Mah) 312.

8. It may be mentioned that the said order was challenged by the petitioner in Writ Petition No.109/2011 before this Court where the application was sent back by order dated 9/02/2012 to the Trial Court for deciding it afresh.

9. The learned Counsel for respondent no.4 has pointed out para 18 of the said order dated 7/01/2011 for the limited purpose to show that the Counsel appearing for the defendant no.2 had stated that he was appearing for one Mr. Anant Volvoikar who was neither shown to be Director nor was authorised by the Board of Directors of the defendant no.2 to represent the company. The attempt is to show that for proper representation of the defendant no.2 the impleadment of respondent no.4 as the Managing Director is necessary.

10. This is countered on behalf of the petitioner by saying that it is always open for the respondent no.4 to appoint a Counsel to represent

the company.

11. I have given my anxious consideration to the rival circumstances and the submissions made. Under the provisions of Order 1 Rule 10(2) of the Civil Procedure Code the Court has wide discretion to add (or strike off) parties to the suit where the Court comes to the conclusion that presence of such party is necessary in order to enable the Court to effectually and completely decide the controversy in question. Albeit such a power and discretion conferred on the Court has to be exercised in judicious manner in the facts and circumstances of each case. When the order directing impleadment is challenged, incidentally the question of any prejudice being caused to the plaintiff by such addition/impleadment will also have to be considered, as a relevant factor.

12. Coming back to the present case, indisputably the petitioner has arrayed M/s. Candolim Developers Pvt. Limited as a party defendant no.2 in the suit. The cause title of the plaint shows that the said private limited company is shown to be represented through its Director. Pravin Grover was the earlier Managing Director of the said Company and the respondent no.4 claims that after the death of Pravin Grover ie. her husband, she is the Managing Director. In such circumstances, it is difficult to envisage as to how prayer for impleadment by the respondent no.4 can be justifiably opposed. Even so far as the case made out by the respondent no.4 that she is

seeking impleadment in order to meet the allegations made against her deceased husband, is concerned it is not possible to accept at this stage that merely because the respondent no.4 has not made any averments in the application about she having any personal knowledge of the affairs of the husband, would be sufficient to decline the prayer for impleadment. If according to the petitioner the respondent no.4 could effectively contest the suit on behalf of the respondent no.2 by engaging a counsel, it is quite difficult to envisage as to how an exception can be taken to the impleadment of the respondent no.4 as a defendant in the suit. It is trite that while exercising the extraordinary jurisdiction under Article 227 of the Constitution of India this Court has to ensure that the Courts and Tribunals below are kept within the bounds of their authority and unless and until the impugned order exhibits jurisdictional error resulting into manifest injustice, no interference is called for.

13. In the result, I do not find that any case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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