

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 525 OF 2015

Shri Dasharath Gopi Gawas,
about 40 years of age, married,
businessman,
r/o H.No.E-935,
Rumdamol, Salcete Goa.

... Petitioner

Versus

1. Shri Kiran Ramnath Shirodkar,
40 years of age,
and his wife

2. Smt. Kavita Shirodkar,
30 years of age,
both r/o H.No.E-957,
Rumdamol, Davorlim,
Salcete Goa

3. Smt. Geeta Ashok Landge,
44 years of age,
r/o H.No. EWS 693,
Near Sidhivinayak Temple,
Housing Board, Gogol,
Margao Goa.

... Respondents

Mr. V. G. P. Dukle, Advocate for the petitioner.

Mr. G. Naik, Advocate for the respondent no.3.

Coram:- F. M. REIS, J.

Date:- 16th December, 2016

ORAL JUDGMENT

Heard Mr. V. G. P. Dukle, learned counsel appearing for the petitioner and Mr. G. Naik, learned counsel appearing for the respondent no.3.

2. By an order dated 25.11.2016 the parties were put to notice that the matter may be disposed of finally at the stage of admission.

3. Rule. Heard forthwith with the consent of the learned counsel.

4. Mr. G. Naik, learned counsel appearing for the respondent no.3 waives service.

5. Upon hearing the learned counsel appearing for the

respective parties, a short point for consideration in the above petition is whether the learned Civil Judge Senior Division, Margao, in a suit for specific performance filed by the petitioner is justified to allow the application under Order I Rule 10 of the Civil Procedure Code filed by the respondent no.3 who admittedly was not a party to the subject agreement nor claiming any right adverse to the vendor in the agreement for sale.

6. Mr. Dukle, learned counsel appearing for the petitioner submits that the law is well settled that in a suit for specific performance strangers to the agreement are not necessary parties to such suit. The learned counsel further pointed out that admittedly the respondent no.3 was not a party to the agreement nor the petitioner is claiming any right as against the respondent no.3. The learned counsel further submits that such agreement was executed between the petitioner and the respondent nos. 1 and 2 and as such according to him the learned Judge was not justified to pass the impugned order allowing the

respondent no.3 to be impleaded in the suit filed by the petitioner. The learned counsel in support of his submissions has relied upon the judgment of the Apex Court reported in ***AIR 2005 SC 2813*** in the case of ***Kasturi V/s Iyyamperumal and others.***

7. On the other hand, Mr. G. Naik, learned counsel appearing for the respondent no.3 has pointed out that the respondent no.3 is a co-owner of the subject property and as such is a necessary party to the dispute raised by the petitioner against the respondent nos. 1 and 2. The learned counsel further pointed out that there are Inventory Proceedings bearing No. 27/2009 filed by the brother of the respondent no.3 which are pending decision before the learned Civil Court at Margao. The learned counsel further pointed out that as the respondent nos. 1 and 2 are not the exclusive owners of the subject property, the question of the petitioner obtaining a decree against the respondent nos. 1 and 2 without making the respondent no.3 as a party would not at all be justified. The learned counsel further pointed out that as

the rights of the respondent no.3 would be gravely affected, the learned Judge was justified to pass the impugned order. The learned counsel further submits that the rights of the respondent no.3 over the subject property would be affected in case the respondent no.3 is not made party to the proceedings.

8. I have considered the submissions of the learned counsel and I have also gone through the records. The contention of Mr. G. Naik, learned counsel appearing for the respondent no.3 that the rights of the respondent no.3 would be affected in respect of the subject property is a matter which the respondent no.3 can always raise in a proper forum, if at all any right of the respondent is affected in accordance with law. In the present petition, the only aspect to be examined is whether the jurisdiction exercised by the learned Judge while passing the impugned order is in accordance with law. The Apex Court in the said judgment in the case of ***Kasturi*** (supra) has observed at paras 7 and 8 thus :

“7. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, of the company; Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

8. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.”

9. On plain reading of the said observations, it is clearly observed therein that persons who have an adverse interest to the owners mentioned in the agreement are not necessary parties to the suit for specific performance. It is not disputed that the claim of the respondent no.3 appears to be adverse to the claim of the respondent nos. 1 and 2 and as such taking note of the observations of the Apex Court, the application filed by the respondent no.3 was not maintainable and deserves to be rejected. The learned Judge has failed to examine the law laid down by the Apex Court while passing the impugned order which calls for interference of this Court under Article 227 of the Constitution of India.

10. For the aforesaid reasons, I find that the impugned order passed by the learned Judge cannot be sustained and deserved to be quashed and set aside. Needless to say that the rights of the respondent no.3 to get his claim adjudicated in accordance with law are expressly reserved. Hence, I pass the

following :

ORDER

- (i) The impugned order dated 28.01.2015 is quashed and set aside.
- (ii) Rule is made absolute in the above terms.
- (iii) The petition stands disposed of accordingly.

F. M. REIS, J.

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