

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.255 OF 2012

Mr. Ramesh Hiranand Kundanmal

.. Petitioner

Versus

Hindustan Petroleum Corporation Limited

("HPCL") and others

.. Respondents

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. V. P. Sawant, Mr. Gunjan Shah i/by Desai & Diwanji, for the Petitioner.

Mr. P. S. Dani, Senior Advocate a/w Mr. D. V. Deokar, Mr. Pinakin Modi i/by Parimal K. Shroff & Co., for the Respondent No.8.

CORAM : R.M. SAVANT, J.

DATE : 5th FEBRUARY 2016

PC.

1. The above Writ Petition takes exception to the order dated 19.11.2011 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the Revision Application filed by the Petitioner herein came to be dismissed and resultantly, the order dated 29.03.2011 passed by the Learned Judge of the Small Causes Court, Mumbai, allowing the application Exh.40 filed by the Respondent No.8 herein came to be confirmed.

2. The suit in question has been filed by the Petitioner against the Respondent Nos.1 to 7 herein amongst whom is the Hindustan

Petroleum Corporation Limited. The Petitioner is the dealer of the Respondent No.1 Corporation, which dealership is in respect of petroleum products. The Petitioner runs the outlet at the site in question which is the suit premises. It is not necessary further dilate on the said aspect. Suffice it would be to state that the Petitioner is claiming declaration of tenancy in the suit filed by him being RAD Suit No.1436 of 2001. It seems that the property in question has changed hands from the Respondent Nos.2 to 7 to the Respondent No.8 by virtue of Sale Deed executed by them on 03.09.2010. It is on the basis of the said development that the Respondent No.8 filed the application Exh.40 inter-alia claiming the following relief :-

“Plaintiff be directed to delete the names of Defendants from the proceedings and join me as Defendant No.2 in the suit.”

3. The said application came to be allowed by the Trial Court on the ground that the Defendant No.8 being the subsequent purchaser is a proper party to the suit. However, at the same time, the Trial Court has by allowing the application in terms of prayer clause (a) directed the deletion of the Respondent Nos.2 to 7 who are the original owners on the ground that they have now divested themselves of their title to the suit property. The said order dated 29.03.2011 passed by the Trial Court was taken exception to by way of Revision Application No.165 of 2011 filed by the Petitioner herein. The said Revision Application was founded on the fact

that the Petitioner is *dominus litus* in so far as the suit is concerned and since the Petitioner has sought the relief on the basis of the transaction which has taken place between the Petitioner and Respondent No.1 and the Respondent Nos.2 to 7, the presence of the said Respondent No.2 to 7 is material in so far as the adjudication of the suit is concerned. The said ground did not appeal to the Revisionary Court, which by the impugned order has dismissed the Revision and thereby confirmed the order passed by the Trial Court.

4. During the course of the hearing of the above Writ Petition, the Learned Senior Counsel Mr. P. S. Dani appearing on behalf of the Respondent No.8 who is the proponent of the said application No.40 on instructions of Mr. D. V. Deokar the representative of Parimal K. Shroff & Co., makes a statement that the Respondent No.8 would not press the prayer clause (a) in so far as the relief sought by way of deletion of the Defendants is concerned and would press the application in so far as only joining the Defendant No.8 is concerned. Upon this, the Learned Senior Counsel Mr. P. K. Dhakephalkar appearing on behalf of the representative of Desai & Diwanji states that the Petitioner has no objection to joining the Respondent No.8 herein as a party Defendant to the suit, but has an objection to the deletion of the Respondent Nos.2 to 7 i.e. original Defendant Nos.2 to 7 to the suit. In view of the said statement made by

Learned Senior Counsel Mr. P. S. Dani, the impugned order in so far as it directs the deletion of the Defendant Nos.2 to 7 i.e. original owners from the array of Defendants is set aside. The said Defendant would continue to be the Defendants in the suit. The order passed by the Appellate Bench of the Small Causes Court would therefore stand modified accordingly. The Petition is allowed to the aforesaid extent and is accordingly disposed of. Amendment to be carried out within four weeks from date.

5. Needless to state that the contentions of the parties on merits are kept open for being agitated before the Trial Court.

[R.M. SAVANT, J]