

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 1190 OF 2015

Mr. Bhagwandas Topandas Kachhela. ... Petitioner.

V/s.

Mr. Pradip Tukaram Waghchoure & Ors. ... Respondents.

Mr. M.M. Sathaye for the Petitioner.

Mr. Girish Agrawal for the Respondents 2, 9 and 10.

CORAM : N.M. Jamdar, J.

22 August, 2016.

Oral Order :-

By Order dated 17 February 2016 notice was issued to the Respondents for final disposal. The Respondents are served. Accordingly, taken up for final disposal.

2. By the impugned order dated 3 December 2014 the Application filed by Respondent Nos. 9 and 10 to implead themselves in Special Civil Suit No. 630 of 2011 filed by the Petitioner was allowed. The Suit is filed by the Petitioner against

Respondent Nos. 1 to 8 seeking specific performance of agreement to sale dated 3 March 2008 against Respondent No.1. The Applicants Nos.2 and 3 are the children alongwith their mother.

3. Heard the learned Counsel for the parties.

4. The basic position in law is that the plaintiff is in carriage of the proceedings and only in exceptional circumstances, the Court directs that a party, which the Plaintiff does not choose to join and does not seek relief can, be joined against the wishes of the Plaintiff. The case of the Respondent Nos.9 and 10 in their application for impleadment is that the property in question is not the property of Respondent No.1 alone but it has been purchased in the joint name and the property is undivided which is not yet been partitioned. It is also their case that the Respondent No.1 was addicted vices and taking advantage of this position has got the agreement for sale executed. As far as these two grounds are concerned, if the written statement filed by the Defendant No.1 is seen that he has also taken the same ground in the written statement. He has stated that the property is not partitioned and it was not the property of the Defendant No.1 alone and that the Defendant No.1 was made addicted vices by the Petitioner. Therefore, the cause which is sought to be put forth by Respondent Nos. 9 and 10, it is in fact the defence of Defendant No.1 - their father. Further, if Respondent

Nos. 9 and 10 are found to be necessary parties in this suit, then it is the risk that the petitioner takes.

5. In the circumstances, the reason put forth by Respondent Nos. 9 and 10 in their application for joining themselves as partition is also a ground being taken by Respondent No.1 in his written statement. No prejudice will be caused to Respondent Nos. 9 and 10 as their cause is adequately protected if impugned order is set aside and the suit is proceeded in their absence. Furthermore, by not joining them as parties, the Petitioner has chose to take a risk. In the circumstances, the order passed by the learned Civil Judge, Senior Division, Nasik dated 3 December 2014 cannot be sustained.

6. Accordingly, the Writ Petition is allowed in terms of prayer clause (b). It is clarified that the outcome of the suit will not be binding on the Respondent Nos. 9 and 10 in case they have any independent right in the suit property.

(N.M. Jamdar, J.)