

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5203 OF 2015

Sushila M. Shinde (Deceased)

through legal heirs

1a) Madhukar Ramchandra Shinde and Ors. .. Petitioners

vs.

Chandrakant Balasaheb Magar and Anr. .. Respondents

Mr.S.W.Baviskar for the petitioner

Mr.Chaitanya Nikte for the respondent no.1

Mr.A.R.Metkari, A.G.P. for the respondent no.2

CORAM : K. K. TATED, J.

DATE : JULY 20, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff is challenging the order dated 26.3.2015 passed by Adhoc District Judge-3, Pune below Exhibit-13 in Civil Appeal No.718 of 2010 rejecting petitioner plaintiff's application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 for impleading third party as defendant no.2 to 49 in the Original Suit.

3 In the present proceeding, petitioner plaintiff filed Regular Civil

Suit No. 3901 of 2000 on 6.11.2000 for possession against respondent no.1 org.defendant. In that Suit, defendant filed written statement dated 17.4.2001 disclosing the fact that the suit property was sold by sale deed dated 23.10.1990. Considering the pleading on record, the Trial Court framed following issues for determination:

Sr.No.	Issues	Findings
1	Does the defendant prove that he has delivered the possession of the suit land to the plaintiff?	Yes
2	Whether the suit is bad for non-joinder of necessary parties?	Yes
3	Whether the suit is within limitation?	Yes
4	Whether the plaintiff is entitled for relief as claimed?	No
5	What order?	As per final order

4 The issue no.2 about the non-joinder of parties held against the plaintiff. Trial Court dismissed the petitioner's Suit by judgment and decree dated 2.8.2010. Thereafter the plaintiff preferred Regular Civil Appeal No.718 of 2010. In that Appeal, plaintiff preferred application below Exhibit-13 on 23.1.2014 for joining third party as defendant in the Suit. That application came to be dismissed by impugned order dated 26.3.2015. Hence, the present petition.

5 The learned counsel for the petitioner submits that appellate court failed to appreciate the fact that proposed defendants were necessary parties in the Suit determining plaintiff's claim about the suit property. He submits that appellate court failed to consider the fact that the defendant in his written statement dated 17.4.2001 first time

disclosed about the sale deed dated 23.10.1990. He submits that unless and until proposed defendants are joined in the present litigation, dispute between the parties cannot be settled and or decided. Hence, impugned order passed by the appellate court dated 26.3.2015 is required to be set aside.

6 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. They submit that petitioner failed to make out any case for allowing them to join third party as defendant nos.2 to 49 after more than 13 years from the date of filing of written statement. He submits that these facts were considered by the appellate court at the time of passing impugned order. Hence, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

7 I have heard both the sides at length. There is no dispute that in the present proceeding, petitioner plaintiff filed suit on 6.11.2000 for possession of the suit land. In that suit, the defendant filed written statement on 17.4.2001 and disclosed the fact that they already created third party right title and interest in respect of the suit property by sale deed dated 23.10.1990. Thereafter, Trial Court on the basis of pleading framed issues as stated hereinabove. One of the issue was whether suit is liable to be dismissed for non joinder of parties. Though petitioner had knowledge about the creation of third part right, title and interest by the petitioner in favour of proposed defendants, petitioner plaintiff failed to take immediate steps for joining them as parties. They filed application below Exhibit-13 on 23.1.2014 i.e. after more than 13 years.

8 Considering these facts and the reason given by appellate court in order dated 26.3.2015, I do not find any substance in the present Writ Petition. Hence, same is rejected.

JUDGE