

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10015 OF 2016

JMC Enterprises LLP

...Petitioner

Versus

Mr Ashish Hasmukhrai Piparia
And Anr.

...Respondents

....

Mr.S.Shamim, Advocate for the Petitioner.

Mr.U.S. Jain, Advocate for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 7th DECEMBER, 2016

P.C.

1. Heard Mr.S. Shamim, learned Counsel for the petitioner and Mr. U.S. Jain, learned Counsel for respondent No.2, at length.
2. On the motion made by Mr. Shamim, leave to delete respondent No.1 is granted as the petitioner is not seeking any relief against respondent No.1 in the present petition.
3. Rule. Mr. Jain waives service. At the request and by

consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 21.4.2016 passed by the learned Judge, City Civil Court, Greater Mumbai in Chamber Summons No.885/2015 in S.C. Suit No.2106/2001. By that order, the learned trial Judge dismissed the Chamber Summons taken out by the petitioner herein for deleting the name of respondent No.1 Ashish Hasmukhrai Piparia as a plaintiff and substituting the petitioner herein as the plaintiff in the suit.

5. In support of this Petition, Mr. Shamim submitted that initially S.C. Suit No.2106/2001 was instituted by Mr. Jaysukh C. Shah. By deed of conveyance dated 29.3.2005, he sold, transferred and assigned his right, title and interest in favour of respondent No.1 Ashish Piparia. Respondent No.1, therefore, took out Chamber Summons No.454/2009 and accordingly he was impleaded as plaintiff in the suit. Mr. Shamim submitted that by deed of assignment dated 24.12.2014, respondent No.1 and three others sold, transferred and conveyed their respective

rights in the suit property in favour of the petitioner. The petitioner has purchased 62.51% share in the suit property. The suit is instituted against the defendants for specific performance of contract and challenging the deed of conveyance executed between the defendant and others. He submitted that in view of deed of assignment dated 24.12.2014, the petitioner has stepped into the shoes of respondent No.1.

6. Mr. Shamim submitted that by the impugned order, the learned trial Judge rejected the Chamber Summons mainly on the ground that respondent No.1 plaintiff did not take out Chamber Summons. The learned trial Judge further observed that in the absence of consent of respondent No.1 / original plaintiff, his name cannot be deleted from the cause title. Even though the petitioner has stepped into the shoes of respondent No.1 and by virtue of subsequent transfer of the suit property, the name of the petitioner cannot be substituted by deleting the name of respondent No.1.

7. Mr. Shamim submitted that the learned trial Judge failed to consider Order I Rule 10(2) of C.P.C. which provides that the Court may at any stage of the proceedings, either upon

or without the application of either party, join any person as plaintiff or defendant whose presence before the Court is necessary for effectually and completely adjudicating upon and settling all the questions involved in the suit.

8. On the other hand, Mr. Jain submitted that respondent No.1 herein has instituted Suit No.1992/1994 on the Original Side of this Court *inter alia* praying for directing defendant No.1 therein to sign and execute the deed of conveyance in favour of the plaintiff in respect of the suit property as per Exhibit-G, in the alternate if the specific performance is not possible, direct defendant No.1 to pay sum of Rs.30,37,000/- as and by way of liquidated damages, amongst other prayers.

9. During pendency of the suit, the plaintiff therein took out Notice of Motion No.1258/1994. By order dated 20.5.1994, pending hearing and final disposal of the Motion, defendants No.2 to 13 (defendant No.6 Varsha B. Shah & Shri Bharat C. Shah, defendant No.7 Smt. Manjula C. Shah and Smt. Varsha B. Shah and defendant No.8 Shri Manojkumar Rasikesh Zaveri) were enjoined from selling, transferring, disposing of or

creating any third party rights in respect of 50% shares purchased by them. The said order was confirmed on 9.12.1997. He submitted that said injunction order is still in force. Despite that, defendants No.6, 7 and 8 along with respondent No.1 conveyed their interest in favour of the present petitioner. The present petitioner, therefore, cannot claim to be a bonafide purchaser in respect of shares of defendants No.6 to 8 therein. He, therefore, submitted that no case is made out for interfering with the impugned order.

10. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent No.1/plaintiff did not dispute execution of conveyance deed dated 24.12.2014. Order I Rule 10(2) of C.P.C. provides that the Court may at any stage of the proceedings, either upon or **without the application of either party**, order that the name of any person who ought to have been joined, whether as plaintiff or defendant, be added. The Court may also permit addition of either plaintiff or defendant whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions

involved in the suit. That apart, Order XXII Rule 10(1) of C.P.C. lays down that in cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

[Emphasis supplied]

11. In the present case, respondent No.1/plaintiff had conveyed his interest in the suit property in favour of the present petitioner herein during pendency of the suit. In view of provisions of Order I Rule 10(2) of C.P.C. as also Order XXII Rule 10(1) of C.P.C., the learned trial Judge should have impleaded the petitioner as a plaintiff in the suit. On this ground, the impugned order cannot be sustained and as such is liable to be set aside. Merely because respondent No.1/plaintiff has not filed Chamber Summons for bringing the petitioner as plaintiff on record and for deletion of his name does not *ipso facto* result in dismissal of Chamber Summons in view of express language of Order I Rule 10(2) of C.P.C. Hence, impugned order is set aside. Chamber Summons is allowed and respondent No.1 shall stand deleted from the suit and is substituted by the petitioner as a plaintiff. Amendment shall be carried out within four weeks

from today and amended slip shall be made over to other side within the same period. The contention of Mr.Jain that to the extent of purchasing shares of defendants No.6 to 8, the petitioner herein cannot claim to be a bonafide purchaser, is expressly kept open. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)