

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

WRIT PETITION NO.8157 OF 2016

Ashwini Arjun Manjrekar and Anr.

.. Petitioners

vs.

Rupji Construction and Ors.

.. Respondents

WITH
WRIT PETITION NO.8158 OF 2016
WITH
WRIT PETITION NO.8159 OF 2016
WITH
WRIT PETITION NO.8160 OF 2016
WITH
WRIT PETITION NO.8161 OF 2016
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WRIT PETITION NO.8162 OF 2016
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WRIT PETITION NO.8163 OF 2016
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WRIT PETITION NO.8172 OF 2016
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WRIT PETITION NO.8200 OF 2016
WITH
WRIT PETITION NO.8201 OF 2016
WITH
WRIT PETITION NO.8202 OF 2016

Mr.V.S.Kapse with Mr.Harish Pawar for the petitioners in all the Writ Petitions

Mr.Ajay Fernandes i/b M/s.Ganesh and Co. for the respondent nos.2 to 7 in all the Writ Petitions

Mr.Ish Jain with Ms.Bindi Parikh i/b Mr.Kunal Bhanage for the respondent no.8 in all the Writ Petitions

CORAM : K. K. TATED, J.

DATE : JULY 15, 2016

PC.:

1 Heard the learned counsel for the parties.

2 Advocate Mr.Ajay Fernandes undertakes to file Vakalatnama on behalf of respondent nos.2 to 7 in all the matters within two weeks from today. So also Advocate Mr.Ish Jain undertakes to file Vakalatnama on behalf of respondent nos.8 in all the matters within two weeks from today.

3 By this petition under Article 227 of the Constitution of India, the Petitioners plaintiffs challenges the order dated 18.6.2016 passed by Bombay City Civil Court, Mumbai in Chamber Summons rejecting plaintiff's application for adding respondent nos.2 to 8 as defendant in the Suit. All these petitions can be disposed of by common order because the issue involved in all these petitions is identical.

4 For the sake of convenience, the parties will be referred to as per their nomenclature in the plaint.

5 In the present proceeding, plaintiffs filed various Suits in Bombay City Civil Court, Mumbai for specific performance of contract with defendant no.1. During the pendency of Suit, the defendant no.1 filed Appeal from Order No.826 of 2013 before this court. That Appeal from Order was decided on 22.10.2013 permitting plaintiff to join respondent no.9 i.e. MHADA as defendant no.2 in the Suit. Instead of joining MHADA as party, plaintiffs after more than 2 years preferred Chamber Summons for joining erstwhile owner of the suit property i.e. defendant nos.2 to 7 as well as the new developer ADI Realtors as defendants in the pending Suits. Those Chamber Summons were rejected by Trial Court on the ground that the Suits filed by plaintiffs were for specific performance of contract of defendant no.1. There was no privity of contract between plaintiff and other proposed defendants. Trial Court also held that though Hon'ble Court by order dated 22.10.2013 allowed plaintiff to join MHADA as defendant no.2, they failed and neglected to do so. In the interest of Justice, Trial Court permitted the plaintiff to join MHADA as defendant no.2. The Trial Court also held that the plaintiffs preferred Chamber Summons at the fag end of the trial. Hence, the present Writ Petitions.

6 The learned counsel for the plaintiffs submit that the Trial Court erred in coming to the conclusion that plaintiffs have not made out any case for joining proposed defendants as defendants in the suits. He submits that original owner i.e. defendant nos.2 to 6 created third party right in favour of proposed defendant no.8 i.e. Adi Realtors. Therefore, if any order is passed by Trial Court, that is required to be satisfied through the real owner as well as subsequent developer. In support of

this contention, he relies on the Affidavit-in-Reply filed by proposed defendant no.7 dated March, 2015 and particularly paragraph 4, 5 and 10. He submits that proposed defendant no.7 specifically stated in their Affidavit-in-Reply in paragraph 10 that they purchased the suit property by deed of conveyance dated 23.7.2014 from erstwhile owners, Ganjawalas. He submits that during the pendency of the Suit original owner created third party right, title and interest in respect of the suit property in favour of proposed defendant no.8. Hence, Trial Court ought to have allowed Chamber Summons for joining erstwhile owner as well as subsequent purchasers as defendants in Suits. He submits that if any decree is against defendant no.1, that will be only paper decree. Therefore, the order passed by Trial Court rejecting the Chamber Summons is required to be set aside allowing plaintiffs to join proposed defendants as defendants in pending Suits. He submits that if present Writ Petitions are not allowed, irreparable loss and injury will be caused to the petitioners.

7 On the other hand, the learned counsel for respondent nos.2 to 7 and 8 vehemently opposed the present Writ Petition. They submit that the plaintiffs filed Chamber Summons in all the matters at the fag end of trial. Hence, they are not entitled for any relief in these Writ Petitions. They submit that initially the plaintiffs filed Suits for specific performance against defendant no.1 only. There is no privity of contract between plaintiff and these proposed defendants. These facts are considered by the Trial Court rightly. Hence, there is no question of entertaining these Writ Petitions.

8 I have heard both the sides. It is to be noted that in the present proceeding, petitioners org.plaintiffs filed Suit for specific performance against defendant no.1 only. By carrying out amendment, as stated by them in Chamber Summons, they want to join erstwhile owners as well as subsequent purchasers as defendants. It is to be noted that there is no privity of contract between plaintiffs and proposed defendants. In any case, suits filed by the plaintiffs were for specific performance against defendant no.1 only. Apart from that, this court by order dated 22.10.2013 in Appeal from Orders permitted plaintiff to join MHADA as party defendant in Suits. That also plaintiff has not done. Apart from that plaintiff filed these Chamber Summonses at the fag end of trial of Suit. All suits were expedited by High Court.

9 Considering these facts as there is no privity of contract between plaintiffs and proposed defendants, I do not find any reason to interfere with the impugned order passed by Trial Court rejecting petitioners plaintiffs applications for joining respondents as defendants in Suit. Hence, all these Writ Petitions stand rejected. No order as to costs.

10 Liberty granted to the petitioner to make application in the Trial Court for carrying out amendment for joining MHADA as party in Suits. That application be decided by Trial Court on its own merits.

JUDGE