

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12039/2015

Keshav Ganpat Gaikar (Since deceased)
Through Legal Heirs & Anr.

... Petitioners

V/s.

Madhavsinh Jamnadas & Ors.

... Respondents

Mr. P. J. Thorat for the petitioners (original defendant No.1 and 2)
Mr. V. R. Tripathi for Respondent No.3.

CORAM: K.K. TATED, J.
DATED : APRIL 6, 2016

PC. :

1. Heard the learned counsel for the parties. The learned counsel for the petitioners (legal heirs of defendant No.1 and defendant No.2) submits that he is not claiming any relief against respondent Nos.1 and 2. He further submits that respondent Nos.4 and 7 are legal heirs of defendant tenant. Hence, it is not necessary to serve them. Statement is accepted.

2. By consent of the parties, matter is taken up for final hearing at the stage of admission itself.

3. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 02.05.2015 passed by the Appellate Bench of Small Causes Court, Mumbai below Exhibit- 25 in appeal No.470/2008 allowing the application filed by respondent No.3

for joining him as party appellant.

4. The learned counsel for the petitioner defendant submits that in the present proceedings, initially respondent Nos.1 and 2 i.e. original plaintiff filed Regular Civil Suit No.2744/1983. During pendency of the said suit, the matter was settled between the petitioner and respondent No.2 plaintiff No.1 Parmamand Jamanadas. He submits that though the matter was settled, consent terms were not filed. He submits that in the meantime, the suit stood dismissed on merits. Thereafter the respondent No.1 plaintiff No.2 preferred appeal No.470/2008. He submits that during pendency of the said appeal, the respondent No.3 S. K. Doshi filed application dated 14.10.2013 (Exhibit- 25) for allowing him to carry out appropriate amendment in the plaint and memo of the appeal and the schedule annexed thereto, which reads thus:

“SCHEDULE

1. The name of the Appellant/ Plaintiff be allowed to be deleted from the plaint and memo of appeal.
2. The name of the respondent No.3 be allowed to be deleted.
3. the name of the applicant be allowed to be added as Appellant / Plaintiff in the plaint and memo of appeal.
4. All further and consequential amendments be allowed.”

5. He submits that in the said application, respondent No.3 pleaded that by deed of conveyance dated 29.04.1994, he purchased 50% share from plaintiff No.1 Parmamand Jamanadas. Thereafter the respondent No.3 filed suit No.3322/1999 in this court against plaintiff No.1

Mr.Parmanand Jamnadas and plaintiff No.2 Madhavsingh Jamnadas. He submits that during pendency of suit No.2233/1999, it was transferred to the Bombay City Civil Court, Mumbai, wherein they filed the consent terms dated 26.08.2013. As per the said consent terms, respondent No.3 become owner of the entire property. Hence, he made the application below Exhibit- 25.

6. The learned counsel for the defendant submits that in the said application respondent No.2 has not stated under which provision, he has filed such application i.e. whether under Order I Rule 10(2) or Order XXII Rule 10 of the Code of Civil Procedure, 1908. He submits that though the defendant raised several objections by filing his reply, the Appellate Bench of Small Causes Court allowed the said application filed by respondent No.3. He submits that the respondent No.3 has to make an appropriate application in appeal No.470/2008. As the respondent No.3 failed to make an appropriate application either under Order I Rule 10(2) or Order XXII Rule 10 of the Code of Civil Procedure, 1908, the appellate court ought to have dismissed the said application. Hence, this Hon'ble Court be pleased to allow the present Writ Petition setting aside the impugned order dated 02.05.2015 below Exhibit- 25.

7. On the other hand, the learned counsel for the respondent No.3 submits that the respondent No.3 acquired right, title and interest in respect of the suit premises first by deed of conveyance dated 29.04.1994 and subsequently by consent terms dated 26.08.2013 in Suit No.3322/1999. He submits that they specifically made an

averment in their application that respondent No.3 is a necessary party to determine the dispute between the plaintiff and defendant. Those facts were considered by the Trial Court on its own merits and allowed the application below Exhibit- 25. Hence, there is no substance in the Writ Petition and same be dismissed with costs.

8. Heard the learned counsel for the parties at length. The main contention raised by the counsel for the petitioner defendant that respondent No.3, third party has not disclosed the provision under which he has made the application for joining him as party. The learned counsel for the defendant submits that the third party must mention the provision under which he has made an application either Order I Rule 10(2) or Order XXII Rule 10 of the Code of Civil Procedure, 1908. It is to be noted that instead of going into the technicalities about non mentioning the provision under which the application is made, it is necessary to see the contents of the application. In the present proceedings, the respondent has specifically mentioned in his application that in view of conveyance deed and consent terms he become owner of the suit premises and therefore, he made an application for joining him as party in the pending appeal No.470/2008 and for carrying out appropriate amendment in the plaint. These facts were considered by the Court below in paragraph 9 of the impugned order. I do not find any reason to interfere with the said well reasoned order. Hence, the Writ Petition stands rejected.

9. At the request of the learned counsel for the respondent No.3, Liberty granted to the respondent No.3 to carry out appropriate

amendment in plaint of RAE Suit No.2744/1983 as well as in appeal memo being No.470/2008 within 6 weeks from today, if it is not carried out.

10. The respondent No.3 to serve an amended copy of the plaint as well as appeal memo to the advocate for the petitioner defendant thereafter immediately.

(K.K. TATED, J.)