

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12275 OF 2015

Mohammad Arif Abdul Majeed Khan and others ... Petitioners
Vs.
Shamheer Aalam Rasheed Khan and others ... Respondents

Mr. Amol P. Mhatre for Petitioners.
Mr. Akshay P. Shinde for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 21, 2016

P.C. :

Heard Mr. Mhatre, learned Counsel for petitioners and Mr. Shinde, learned Counsel for respondent No.3 at length. Mr. Mhatre orally applies for leave to delete respondents No.1.1 to 1.5 and respondents No.2.1 and 2.2 as respondent No.3 is the only contesting respondent. Leave as prayed for is granted. Amendment shall be carried out forthwith. Rule. Mr. Shinde waives service for respondent No.3. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 16.09.2015 passed by the learned Civil Judge Junior Division, Bhiwandi below exhibit-169 in Regular Civil Suit No.888 of 1986. By that order, the learned trial Judge allowed the application made by the respondent No.3, hereinafter referred to as applicant, under Order I, Rule 10 of the Code of Civil Procedure, 1908 for impleading him as a party defendant in the Suit.

3. Mr. Mhatre submitted that petitioners, hereinafter referred to as plaintiffs, have instituted Suit against - (i) Shamsheer Aalam Abdul Rasheed Khan, since deceased, through his LRs, and (ii) Abdul Jabbar

Jahangear Khan, since deceased, through his LRs for declaration and injunction. Pending the Suit, defendants No.1 and 2 executed registered agreement of sale on 10.11.1987 in favour of Shri Aziz Ahmad Shabbir Ahmad, Shri Aainul Abdul Haque, Shri Zubair Ahmad Abdul Raheem and Shri Mainuddin Mukhtar Ahmad Shaikh (since deceased) through his LRs (for short defendants No.3 to 8). They made application for impleadment exhibit – 152, at the stage of final arguments of the Suit. The application was allowed by the trial Court on 14.09.2009. Aggrieved by that decision, plaintiffs instituted Writ Petition No.1877 of 2010. By order dated 15.07.2014, this Court allowed the Petition and set aside order dated 14.09.2009 and directed the trial Court to decide the application exhibit-152 made by them afresh.

4. Pursuant to the direction given by this Court, the learned trial Judge heard application exhibit-152 and rejected the application on 09.10.2014. During the pendency of the Suit, defendants No.3 to 8 executed registered agreement in favour of the applicant herein on 21.02.2014. Applicant filed application exhibit-169 on 06.09.2014, that is to say, during the pendency of application exhibit-152 filed by defendants No.3 to 8. By the impugned order, the learned trial Judge allowed the application.

5. Mr. Mhatre submitted that applicant is claiming through defendants No.3 to 8. If their application for impleadment is rejected, the learned trial Judge could not have allowed the application, which will have the effect of nullifying order dated 09.10.2014 without that order being challenged.

6. On the other hand, Mr. Shinde supported the impugned order. He submitted that during the pendency of the application exhibit-152, applicant had filed application on 06.09.2014. The applicant could not

remain present at the time of hearing of application exhibit-152. The learned trial Judge has allowed the application on the ground that the applicant is a transferee pendente lite. He is entitled to be joined as a party defendant.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not disputed that defendants No. 3 to 8 filed application exhibit-152 for impleading them as party defendants on the ground that during the pendency of the Suit, defendants No.1 and 2 had executed registered agreement in their favour on 10.11.1987. It is also not in dispute that after remand by this Court, the learned trial Judge rejected their application on 09.10.2014. It is also not in dispute that the said order is not challenged till date. In other words, the said order has attained finality. It is also not in dispute that defendants No.3 to 8 executed registered agreement in favour of the applicant on 21.02.2014. In other words, applicant is claiming through defendants No.3 to 8. If the application made by defendants No.3 to 8 is rejected and they are not made party in the Suit, surely, the learned trial Judge could not have allowed the applicant herein to be impleaded as party as basically, he is claiming through them.

8. In view thereof, impugned order is liable to be set aside. Hence, the following order:

a. Rule is made absolute in terms of prayer clause (a) with no order as to cost.

b. Liberty to apply to the trial Court for expeditious disposal of the Suit is granted. Order accordingly.

(R. G. KETKAR, J.)