

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 742 OF 2016

Mangilal Jawanmal Parmar, since ..Petitioners.
deceased, through legal heirs
and Ors.

Vs

State of Maharashtra and Anr. .. Respondents

Mr. Rajesh S. Datar, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 23/12/2016

PC:

1. Heard Mr.Rajesh Datar, learned counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 26.6.2015 passed by the learned 3rd Jt. Civil Judge, Sr.Dn., Thane below Exhibit-10 in Spl. Civil Suit no. 715 of 2013. By that order, the learned trial Judge allowed the application made by respondent no.2, hereinafter referred to as applicant under Order 1, Rule 10 of C.P.C. for impleading them as party defendant.

3. In support of this petition, Mr. Datar strenuously contended that the petitioners, hereinafter referred to as 'plaintiffs', have instituted suit against respondent no.1-State of Maharashtra, hereinafter referred to as 'defendant no.1', inter alia, praying for

declaration that Power of Attorneys dated 22.12.1960 are conveyance and the plaintiffs are absolute owners of the suit property. During the pendency of the suit, the applicants filed application for impleading them as defendants. He submitted that the learned trial Judge was not justified in allowing the application as the applicants are neither a necessary nor a proper party. He has taken me through the application Exh.10 filed by the applicants as also paragraph 4 of the impugned order. He submitted that lis is between the plaintiffs on one hand and defendant no.1 on the other. Presence of applicants is absolutely not necessary for deciding the controversy raised in the suit. Mr.Datar submitted that the plaintiffs have instituted separate suit for cancellation of the development agreement against the applicants and, therefore, their presence is not necessary.

4. With the assistance of the learned counsel for the petitioners, I have perused the application filed by the applicants and more particularly paragraphs 2(a) to (h). The applicants have contended that on 15.7.2000, the development agreement-cum sale came to be executed. On 1.8.2000, the predecessor of the plaintiffs and other co-vendors executed a irrevocable power of attorney in favour of the Director of the applicants to do and carry out all necessary acts in respect of the suit land. The learned trial Judge has considered the case made out in the application and observed that presence of the applicants is

necessary for deciding the suit. In my opinion, the applicants are a proper party to the suit as they are relying upon the documents in respect of the very property in respect of which the plaintiffs have claimed declaration of ownership. Hence no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)