

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 323 OF 2015
IN
NOTICE OF MOTION (L) No. 1716 of 2014
WITH
NOTICE OF MOTION NO. 799 OF 2015**

Mr. Virendra S. Mehra and ors. .. Appellants

V/s.

Ripusudan S. Mehra and ors. .. Respondents.

Mr. Snehal Shah a/w. Mr. Behl i/b M/s. Kanga & Co. for the Appellants/Applicants.

Mr. Simil Purohit a/w. Ms Rima Paradkar i/b M/s. D.M. Legal Associates for Respondent Nos.1 to 3.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 31 AUGUST 2016.

P.C.

1] The challenge in this appeal is to the judgment dated 8 April 2015 disposing of Notice of Motion (L) No. 1716 of 2014 in Suit No. 423 of 2001. By the impugned judgment, the appellants, i.e., original plaintiff Nos.1(a) to 1(c), 5, 6(a) and 6(b) have been transposed as defendants and leave is granted to some of the respondents, i.e., original plaintiff Nos.3(a) to 3(c) to conduct the suit as plaintiffs.

2] Mr. Snehal Shah, learned counsel for the appellants, submits that there was no case made out to transpose the

appellants, who were some of the original plaintiffs, as defendants. Such transposition, will seriously affects the right of the appellants insofar as conduct of the suit is concerned. Mr. Shah submitted that should the original plaintiff Nos.3(a) to 3(c), who are now to conduct the suit by virtue of the impugned judgment, decide to withdraw the suit or compromise the same, the interest of the appellants are bound to be affected. For these reasons, Mr. Shah submitted that the impugned judgment warrants interference.

3] Mr. Shah, without prejudice to the aforesaid also submitted that the appellants will have no objection to sign Vakalatnama in favour of advocate representing plaintiff Nos.3(a) to 3(c), should the need arise for the same.

4] We have heard learned counsel for the parties. We have considered their submissions, perused the record as well as the impugned judgment. In our view, there is no case made out by the appellants warranting interference with the impugned judgment, to the extent it directs the transposition of the appellants as defendants to the main suit.

5] The suit as instituted, seeks a declaration that the agreement dated 22 July 1995 between the plaintiffs and original respondent No.6(original defendant) stands validly terminated. The agreement dated 22 July 1995 relates to suit property, which is claimed to be owned by the plaintiffs in the suit. The appellants

claim to represent 2/3rd share and the plaintiff Nos.3(a) to 3(c) represent 1/3rd share in the suit property.

6] There is no dispute that the appellants have sold their undivided share in the suit property in favour of some third party during pendency of the suit. No doubt, Mr. Shah learned counsel for the appellants states that such sale is made specifically subject to final outcome of the suit. On this basis, Mr. Shah submits that even the appellants have sufficient interest in obtaining a declaration that the agreement dated 22 July 1995 with respondent No.6 stands validly terminated. In our judgment, however, the circumstance that the appellants have, during pendency of the suit sold their share in the suit property to some third party, was a relevant consideration taken into account by the learned Single Judge in exercising her discretion and holding that plaintiff Nos.3(a) to 3(c) are proper parties to conduct the suit or to be in carriage of the suit. Order 1 Rule 11 of CPC provides that the Court may give the conduct of a suit to such person as it deems proper.

7] Learned Single Judge in this case has exercised discretionary powers. As between the plaintiffs, who have already sold their right title and interest in the suit property and plaintiffs who have retained the same, the learned Single Judge has given the conduct of the suit to the plaintiffs who have retained their right, title and interest in the suit property. There is nothing

unreasonable in the exercise of such discretion as to warrant interference.

8] There is no question for any serious prejudice to the appellants, as, they will continue to be parties to the suit. As defendants to the suit, it is always open to them to support the plaintiffs in seeking a declaration that the agreement dated 22 July 1995 stands validly terminated. The apprehension that the original plaintiff Nos.3(a) to 3(c) might withdraw the suit or compromise the same, has really no basis, at least at the present. Should such a situation arise, it is always open to the appellants to invoke the provisions contained in Order 23 Rule 1 A CPC. In any case, in order to allay any such apprehensions, suitable directions can always be issued to protect the appellants, should such eventuality indeed arise.

9] Accordingly, we dispose of this appeal in the following terms:

a] The impugned judgment transposing the appellants as defendants in the suit is not interfered with;

b] In case, plaintiff Nos.3(a) to 3(c), who are now to conduct the suit intend to withdraw the suit or enter into any compromise in relation to suit, such plaintiffs, even before seeking leave of the Court to do

so, shall notify the appellants herein of their intention to do so, by giving at least a 15 days notice in that regard; and

c] Upon receipt of intimation/notice as aforesaid, the appellants shall be at liberty to seek their re-transposition as plaintiffs in order to conduct the suit.

10] The appeal is disposed of in the aforesaid terms. In view of disposal of the main appeal, the notice of motion do not survive and the same is disposed of accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)