

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2359 OF 2017

01 Smt.Pratistha w/o Vidyadhar Mahajan,
age: 35 years, Occ: Business,
R/o in front of Tuljabhavani Mandir,
Nath Nagar, Aurangabad.

02 Pravin s/o Balwansing Rajput,
age: 32 years, Occ: Agriculture,
R/o in front of Durga Kirana Merchant,
R/o Pardeshipura, Paithan,
District Aurangabad.

Petitioners

Versus

01 Sow.Swapna w/o Amol Yadav,
age: 26 years, Occ: Household,
R/o 905/B, Jangid Hights,
Godbandar Road, Thane,
District Thane.

02 Sow.Meghana w/o Deepak Sakore,
age: 30 years, Occ: Household,
R/o 801, Krishtal Garden Estate,
Vasant Vihar, Thane,
District Thane.

03 Dnyaneshwar s/o Dattu Shinde,
age: 36 years, Occ: Agriculture;

04 Parmeshwar s/o Dattu Shinde,
age: 30 years, Occ: Agriculture;

05 Smt.Dwarkabai w/o Dattu Shinde,
age: 62 years, Occ: Agriculture,
All R/o Bidkin, Tq. Paithan,
District Aurangabad.

Respondents

Mr.D.K.Kulkarni, advocate for the petitioners

Mr.P.K.Joshi, advocate for Respondents No.3 to 5.

CORAM : S.B.SHUKRE, J.

DATE : 22nd FEBRUARY, 2017

ORAL JUDGMENT :

1 Heard. Rule made returnable forthwith and heard finally by consent of learned Counsel for the petitioners and learned Counsel for Respondents No.3 to 5. There is no need to issue notice to Respondents No.1 and 2 considering the consent given by them for passing decree of specific performance.

2 The basis for an application filed by Respondents No.3, 4 and 5, seeking their impleadment in Special Civil Suit No.176 of 2015 filed by petitioners against Respondents No.1 and 2, is that the sale deed dated 19.09.2009 executed by them in favour of Respondents No.1 and 2 was never intended to be acted upon and its underlying transaction was mortgage of the property to secure the debts incurred by them on account of the amount borrowed by them from Respondents No.1 and 2. This basis is entirely different from the basis of the civil suit filed by petitioners. This suit was for performance of specific contract arising from agreement to sell executed by Respondents No.1 and 2 in respect of suit land, which they claim to have purchased from Respondents No.3 to 5 on 19.09.2009 by registered sale deed. It is clear that these two causes of actions are entirely different and, therefore, Respondents No.3 to 5 ought not to have been permitted to be impleaded as necessary parties. If respondents No.3 to 5 are desirous of taking forward their cause of action, they may do so by filing another suit. Of course, it is the contention of learned Counsel for Respondents No.3 to 5 that this suit is collusive as

Respondents No.1 and 2 have given their consent for passing of the decree.

3 Without going into these questions, the fact remains that two different causes of actions cannot be allowed to be joined in one and the same suit and, therefore, Respondents No.3 to 5, having a different cause of action, need to pursue the same independently.

4 In these circumstances, I find that the writ petition deserves to be allowed and is allowed by quashing and setting aside the patently illegal order, which is impugned herein and which has been passed by the trial Court on 02.01.2017, below Exhibit-13 in S.C.S. No.176/2015. The application vide Exhibit-13 stands rejected.

5 Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE