

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7786 of 2016

Sau Chaya Ramanlal Bhandari,
Age : 50 years, Occ : Household,
R/o. 154, Ravivar Peth, Teli Galli,
Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. Chandrakant S/o. Namdeo Chinchkar
Age : 75 years, Occ.: Labourer,
R/o.: Indiranagar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar

(Orig. Plaintiff)

2. Budhmal S/o. Dagaduram Mehta,
Age: 81 years, Occ. Nil,
C/o. Hanuman General Stores,
Shani Chowk, Ravivar Peth,
Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar

(Orig. Defendant)

RESPONDENTS

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Shri. D.B. Rode, Advocate for Petitioner;
Shri. N.V. Gaware, Advocate for Respondent No.1;
Shri. S.D. Kotkar, Advocate h/f. Shri V.S. Badakh,
Advocate for Respondent no.2.

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CORAM: P.R. BORA J.

DATE : 28/4/2017

Date of reserving the
judgment: **4/4/2017**
Date of pronouncing
the judgment: **28/4/2017**

JUDGMENT:

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. The petitioner has filed the present petition against order dated 22nd of June, 2016, passed by the Civil Judge, Senior Division, Shrigonda, in an application at Exh.17 in Special Civil Suit No.64/2010.

3. The petitioner had filed the aforesaid application under Order 1 Rule 10 of the Code of Civil Procedure seeking her impleadment in the aforesaid Special Civil Suit as defendant no.2. It was the contention of the petitioner that the property, which is the subject matter of the aforesaid Special Civil Suit has been purchased by her vide registered sale deed executed in her favour on 18.11.2010 by the defendant in the aforesaid Special Civil

Suit, namely, Budhmal Dagduram Metha for consideration of Rs.6,00,000/- (Rs. six lakhs). According to the petitioner, since the aforesaid Special Civil Suit has been filed by the present respondent no.1 for cancellation of the sale deed dated 8.10.2002 executed by him in favour of present respondent no.2, pertaining to the same subject property which she has purchased from respondent no.2, she is necessary party in the aforesaid Special Suit. It was her further contention that in an appeal filed before the District Court by the original defendant pertaining to the same subject property, she had filed an application to intervene and the same was allowed by the learned District Judge.

4. The intervention application so filed by the petitioner was opposed by respondent no.1. According to respondent no.1, since he has filed the Special Civil Suit for cancellation of the sale deed executed by him in favour of respondent no.1, and since the present petitioner is noway concerned with the said sale deed, she is not a necessary party to the subject suit. It was the further contention of respondent no.1 that since the sale deed

dated 8.10.2002, is void and respondent no.2 herein did not get any right in the subject property on the basis of the said void sale deed, the transactions, if any, entered into by respondent no.1, either with the present petitioner or someone else, were not binding on him or on the subject property.

5. The learned Civil Judge, after hearing both the parties, has rejected the application filed by the present petitioner vide the impugned order. The learned Civil Court has rejected the application observing that since the dispute is in relation to the sale deed dated 8.10.2002, and at that time the present petitioner was noway concerned with the subject property, she was not having any right to intervene in the suit. In exception to the order so passed, the petitioner has preferred the present writ petition.

6. Shri D.B.Rode, learned Counsel appearing for the petitioner, criticized the impugned order on plural grounds. Learned Counsel submitted that the learned trial Court has failed in appreciating the provisions under

Order 1 Rule 10 of the Code of Civil Procedure. Learned Counsel further submitted that when the District Judge had remitted back the matter to the Civil Court for deciding it afresh, and on the date of passing such order by the District Court, the present petitioner was appellant no.2 in the said appeal, the Civil Court ought to have allowed the application of the petitioner for impleading her as defendant no.2 in the pending Special Civil Suit. Learned Counsel further submitted that the learned Civil Judge did not appreciate that when the subject property is purchased by the petitioner by way of registered sale deed and in the property card the name of the present petitioner appears as the owner and possessor of the subject property, she must have been allowed to intervene and resist the suit filed by respondent no.1 in respect of the same property. Learned Counsel, in support of the contentions raised by him, relied upon the judgment of the Honourable Apex Court in the case of Sumatibai and others vs. Paras Finance Co. ((2007) 10 SCC 82) and also the judgment of the learned Single Judge of this Court in the case of Sushil Kaur Sukhbhirsingh Chhatwal and others. Vs. Aurangabad Ginning and Pressing Factory and

another (2012 (2) Mh.L.J. 295).

7. Shri N.V.Gavare, learned Counsel appearing for respondent no.1, resisted the submissions made on behalf of the petitioner. Relying on the judgment of the Honourable Apex Court in the case of Kasturi vs. Iyyamperumal and others (2005 (5) Bom. C.R.80), it was sought to be canvassed by Shri N.V.Gavare that in the suit for specific performance of contract for sale, the persons who are not party to the said contract, cannot be joined or allowed to be impleaded as a necessary party to the said suit. Learned Counsel submitted that the persons who are not party to the contract of sale are to be treated as strangers and cannot be allowed to be impleaded in the said suit and, as such, the trial Court has rightly rejected the request of the petitioner. Learned Counsel further submitted that since the dispute raised by the original plaintiff pertains to the sale deed executed by him in favour of respondent no.1, and since the petitioner is noway concerned with the said transaction, the petitioner is not a necessary party to the said suit.

8. After having considered the submissions advanced by the learned Counsel for the respective parties and on going through the material available on record, the impugned order, apparently, appears unsustainable. The learned Civil Judge has rejected the request of the petitioner to implead her as a party defendant in the Special Civil suit on the ground that the petitioner was noway concerned with the subject property on 8.10.2002 when the plaintiff had executed the sale deed of the said property in favour of respondent no.1 which has been sought to be cancelled by the plaintiff by filing the Special Civil Suit. The learned trial Court has also observed that the petitioner is neither having any nexus with the subject property nor with the relief sought by the plaintiff in the Special Civil Suit and, as such, cannot be impleaded as a party to the said suit. Considering the facts involved in the present matter, the finding so recorded by the trial Court is erroneous and deserves to be set aside.

9. It is the case of the petitioner that she has purchased the subject property from the defendant in the said Special Civil Suit, namely, Shri Budhmal Dagduram

Metha by way of registered sale deed duly executed on 18.11.2010. On the said date the subject property was admittedly standing in the name of said Budhamal Metha. It is further not in dispute that respondent no.1 filed the suit seeking cancellation of the sale deed executed by him on 8th of October, 2002, on 9th of December, 2010. In the Special Civil Suit, respondent no.1 had sought following two reliefs; first that the sale deed dated 8.10.2002 executed by him in favour of respondent no.2 be declared void and the other that the defendant in the Special Civil Suit be permanently restrained from causing interference in his peaceful possession of the subject property either by himself or through his agents, friends or relatives. Since the petitioner is the bona fide purchaser of the subject property, in respect of which certain declaration is sought by the present respondent no.1 and had also sought the permanent injunction in relation to the said property, the petitioner is necessary and property party to the said suit.

10. In an application filed under Order 1 Rule 10 of Code of Civil Procedure, the Court is not expected to go

into the merits of the case as set up or the contentions raised in oppose of the said application. Prima facie, it is to be seen whether the party who claims intervention possesses any interest in the subject matter and all other questions in regard to the rival claims made by the parties as about the title, etc. should be left for decision to be taken after regular trial.

11. In the instant case, the petitioner is definitely having an interest in the subject property since she has purchased the said property by registered sale deed for valuable consideration of Rs.6,00,000/- (Rs. six lakhs). Petitioner has placed on record the copy of the said sale deed. Petitioner has also placed on record the property card evidencing that on the basis of the said registered sale deed, her name has been mutated to the subject property as the owner and possessor of the said property.

12. The object of sub rule (2) of Rule 10 of Order 1 of Civil Procedure Code is to bring before the Court all the persons who are parties to the dispute relating to one subject matter so that the disputes may all be determined

at the same time without delay, inconvenience and expense of separate actions so that the Court may be in a position to adjudicate upon and settle all the questions involved in the suit and dispute between the parties attain finality. As has been held by the Honourable Apex Court in the case of Sumatibai and others (cited supra), if a party can show a fair semblance of title or interest in the property which is the subject matter of the suit, he can certainly file an application for impleadment and ought to be impleaded being a necessary party.

13. As is contended by the petitioner, respondent no.1 is well aware of the fact that the present petitioner had purchased the suit property from respondent no.2. The petitioner in an application filed by her before the trial Court has specifically averred that the respondent no.1 had on 19.11.2010 raised an objection in the office of Deputy Superintendent of Land Records, Shrigonda, for mutating the name of the petitioner to the subject property. It is thus evident that respondent no.1 was well aware of the fact that the subject property has been purchased by the present petitioner before she filed the

suit.

14. The judgment relied upon by Shri N.V.Gavare, learned Counsel appearing for respondent no.1, in the case of Kasturi (cited supra), may not be applicable to the facts of the present case since the Special Civil Suit filed by respondent no.1 against respondent no.2 is not the suit for specific performance of contract for sale.

15. In view of the facts as above, the finding recorded by the Civil Court in the impugned order that the petitioner neither have any nexus with the subject property nor with the relief sought by the plaintiff in the Special Civil Suit cannot be sustained. Considering the facts on record, the petitioner is a proper and necessary party to the Special Civil Suit filed by respondent no.1 against respondent no.2. The trial Court has manifestly erred in rejecting the application filed by the present petitioner. The impugned order, therefore, deserves to be set aside. Hence, the following order:

ORDER

1. The impugned order is quashed and set aside. Consequently, the application at Exh.17 in Special Civil Suit No.64/2010 filed by the petitioner is allowed.

2. The writ petition is allowed in aforesaid terms. Rule made absolute accordingly.

(P.R.BORA)
JUDGE

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