

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9625 OF 2014

Dhondibapu S/o Rama Wani & others

Petitioners

Versus

Ramchandra S/o Punja Wani and others

Respondents

Mr. A.S. Gandhi advocate for the petitioners

Mr. S.S. Kulkarni advocate for Respondent Nos.1 to 6

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 17th July, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 9.7.2014 passed by the Trial Court, by which Application Exhibit 53 filed by the original plaintiffs to add the purchasers as plaintiffs has been partly allowed and four persons have been directed to be arrayed as plaintiffs along with the original plaintiff.

2 This Court, while issuing notice on 3.11.2014 has stayed RCS No.589/2014.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 The plaintiffs have filed Exhibit 52, seeking leave to join the purchasers of the suit property, as plaintiffs. Suit has been filed for perpetual injunction against the defendants for obstructing the peaceful possession over the suit lands. The plaintiffs claim to have possession over the suit lands for the last 40 years as tenants. Defendant No.5, who is said to be the owner of the suit land has entered into a compromise deed with defendant Nos.1 to 4 in an earlier suit bearing No.RCS 512/2011. The original plaintiff in RCS No.589/2011 was not a party to the said suit.

5 Defendant No.5, who is said to have parted with the property in favour of defendant Nos.1 to 4, is now said to have sold the said property to the plaintiffs as well as Ajit Subhash Wani, Ramesh Dyandeo Wani, Nivrutti Hari Wani and Rahul Sopan Wani. It is in this backdrop that the plaintiffs moved Application Exhibit 52 claiming that the interest of the purchasers are equated with the interest of the original plaintiffs and hence order 1, Rule 1(a) and (b) would be attracted.

6 The grievance of the petitioners, who are defendant Nos.1 to 4 is that defendant No.5 has been won over by the plaintiffs only to create further complications in the suit and to ensure that the petitioners are deprived of their rightful claim. It is with this

intention that defendant No.5 might have sold the suit property to the original plaintiffs. Consequentially, a contradictory cause of action would crop up before the Trial Court as the original plaintiffs have sought injunction on the basis of their tenancy and the added plaintiffs are claiming a right to the suit property as owners having purchased the suit property from defendant No.5 along with original plaintiffs.

7 Shri Gandhi, therefore, strenuously submits that the original suit filed on the basis of a claim of tenancy by the plaintiff is now converted into a claim of ownership on the basis of a sale deed, by which the plaintiff and the added plaintiffs have acquired ownership.

8 It is trite law that a defendant may adopt conflicting stands. But, if the plaintiffs adopt conflicting stands, they are sure to suffer its ill effects. If the plaintiff along with added plaintiffs desire to take such risk, I do not find at this stage, that the defendant Nos.1 to 4 who are petitioners herein, would really be affected. Moreover, they have been granted the liberty to file additional written statement on the amended plaint. On the date of impugned order, the Trial in the suit has not commenced.

9 Considering the above, this petition is dismissed and keeping in view the liberty granted by the Trial Court to the petitioners to file an additional written statement, they would, therefore be at liberty to raise all the grounds with regard to the conflicting stands taken by the plaintiffs.

(RAVINDRA V. GHUGE , J)

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