

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

**WRIT PETITION NO. 10892 OF 2014
WITH
WRIT PETITION NO. 10890 OF 2014**

Kiran Laxminarayan Mantri

..PETITIONER

VERSUS

Sunita Avinash Kamdar and Others

..RESPONDENTS

....

Mr. N.D. Kendre, Advocate for petitioner.

Mr. S.G. Chapalgaonkar, Advocate for Respondent Nos. 1 and 2.

Mr. P.C. Mayure, Advocate for Respondent No.4.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. At the time of issuing notice in both the matters, this Court has made certain observations based upon the submissions of the petitioners which are identical, as under:-

“1. The petitioner has preferred RCS No.498/2012 before the Trial Court. The issue set out in the suit is as regards reliefs against the original vendor and for declaration of ownership and cancellation of the Sale Deed executed in favour of defendant Nos. 1 and 2. Injunction has also been sought in the said suit.

2. An application was filed by Balaprasad Shriniwas, respondent No.5 herein, under Order 1 Rule 3 of the CPC,

contending therein that he is an appropriate party to be joined as a defendant. By the impugned order passed by the Trial Court dated 05/09/2014 below Exh.46, the application was allowed and the said applicant was directed to be added as a defendant in the suit within 7 (seven) days.

3. *Grievance is that the said applicant Balaprasad Shrinivas is a stranger to the proceedings. He may claim to have entered into an agreement to sale with defendant Nos. 1 and 2, however, no right has been created in him since there is nothing placed on record to indicate that the agreement to sale has been executed.*

4. *The Trial Court has taken into account the pendency of another proceeding initiated by respondent No.5 / applicant as regards the agreement of sale and seeking specific performance of contract.*

5. *Reliance is placed upon the judgment of this Court in the case of Gopikabai Nathuram Malewar and another Vs. Bapurao Mahadeorao Surkar, 1995(2) Mh.L.J. 816. Paragraph Nos.2,3 and 4 of the said judgment are read as under :*

“2. The plaintiffs admittedly have filed a suit for possession, arrears of rent and damages against the Nonapplicant Bapurao. The defendant moved an application under Order I, Rule 10(2) C.P.C. stating therein that one Barmadin Dubey is necessary party in the present suit because one Balaji Shrawan Dandekar had during his life time executed an agreement to sell in regard to the disputed property in favour of one Barmadin

Dubey and the said Barmadin Dubey had filed suit for specific performance of contract which is registered at Civil Suit No. 14/85 and is pending trial before the 6th Joint Civil Judge, Junior Division, Nagpur. The defendant thus prayed that Barmadin Dubey is necessary party in the present suit, and, therefore, he should be impleaded as Defendant No. 2.

3. After perusing the application under Order I, Rule 10 (2) of C.P.C. filed by the defendant Bapurao and the order passed by Small Causes Judge, Nagpur on 841991, I am of the opinion that the said Court committed serious error of jurisdiction in allowing the application filed by the defendant and directing Barmadin Dubey to be impleaded as party in the suit for possession filed by the plaintiffs. Ordinarily plaintiff is dominus litis and it is for the plaintiff to pray for the reliefs against the particular party and in the present case, the suit being for possession and property in question being in possession of Bapurao, the plaintiffs have filed the suit against defendant Bapurao. So far as Barmadin Dubey is concerned, merely because an agreement to sell has been executed by Barmadin Dubey, it cannot be said that any title has been created in favour of Barmadin Dubey regarding the property in question. Agreement to sell does not create any title under law. There was no cause of action against Barmadin Dubey and Barmadin Dubey, in the facts and circumstances, is neither necessary, nor proper party. Stranger to the litigation cannot be impleaded as a party at the instance of the defendant. Presence of Barmadin Dubey is not at all necessary for the determination of the real matter in dispute.

4. In this view of the matter, the order dated 841991

passed by Small Causes Judge, Nagpur, cannot be sustained and is consequently set aside. The application filed by the defendant under Order I, Rule 10 (2) of C.P.C. is dismissed.”

6. *The petitioner, therefore, submits that the instant case virtually stands on an identical footing as like the facts in the Gopikabai's case (supra).*

7. *In the light of the above, issue notice before admission to the respondents, returnable on 29/01/2015. Mr.Patel waives service on behalf of respondent Nos. 1 and 2. Till the next date of hearing, the learned Trial Court shall not proceed with RCS No.498/2012.”*

2. The only difference in these two matters is that in the first petition the issue is as regards Regular Civil Suit No. 499 of 2012 and in the second petition is as regards Regular Civil Suit No. 498 of 2012.

3. The learned Counsel for the respondents has strenuously submitted that there was an agreement of sale in between Respondent Nos. 3 and 4 and also in between Respondent Nos. 1 and 2, dated 16th April, 2010 and 10th May, 2011, respectively. As recorded in the earlier order dated 22nd December, 2014, the suits filed by the petitioner are for seeking reliefs against the original vendor and for declaration of ownership as well as for cancellation of the two sale deeds.

4. Respondent No.4 – Balaprasad Shrinivas Bhutada herein is the applicant before the Trial Court in both these suits having filed applications Exhibits 42 and 46 for being impeded as a defendant. He has also preferred a Special Civil Suit No. 40 of 2013 in which the petitioner herein is a defendant and it pertains to the same suit properties. It is apparent that on account of the transactions between the parties, Balaprasad has interest in the suit property.

5. In this backdrop, the petitioner was called upon to state as to whether he would not put forth any claim against Balaprasad in both these suits even if, (a) on account of events having occurred during the pendency of the suit, if Balasaheb has developed any legal right to the title of any portion of the suit property and (b) if he is found to be in a possession of any portion of the suit property, the plaintiff would not seek execution of the decree against Balaprasad? The thoughtful reply of the petitioner is that the Special Civil Suit No. 40 of 2013 would be effected by such statement, if made by the plaintiff, as there is some dispute between the plaintiff and Balasaheb even with regard to the suit property.

6. Considering the above, I find that the Trial Court has properly appreciated the facts, prima facie, in paragraph nos. 4 and 5 of the impugned order. Defendant Nos. 1 and 2 in the second suit have executed sale deeds in favour of the plaintiff as well as the defendants. Same is the situation with regard to the sale deeds which are subject matters of the first suit. Apparently,

the conflict of interest in relation to the suit property in both the suits would involve Balaprasad. Since the petitioner does not desire to be bound to an undertaking that he would never claim any relief against Balaprasad and would never resort to execution of the decree in the event he succeeds against Balaprasad under any circumstances, would indicate that the presence of Balaprasad in these matters would in fact lead to a proper adjudication of the suit.

7. Considering the above, I do not find that the impugned orders could be termed as being perverse or erroneous. These petitions are devoid of merits and therefore stand dismissed.

8. The learned Counsel make a request that the pending Regular Civil Suit Nos. 499 of 2012 and 498 of 2012 be expedited. It is also stated that some of the suits filed after these two suits have progressed to the stage of recording of oral evidence and even thereafter. Only because these two suits were stayed by the Court, those matters did not progress.

9. In these circumstances, the Trial Court would consider the expeditious disposal of these two suits looking at the pendency before the Court and in the event later suits have already progressed.

(RAVINDRA V GHUGE, J.)

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