

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8048 OF 2016

Mr. Anil Babu Patil And Anr.	...Petitioners
<i>Versus</i>	
Mr. Babu Janu Patil And Ors.	...Respondents

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Mr.Sandesh Patil a/w. C.Y. Shah, Advocate for the Petitioners.
Mr. Yogesh Dandekar, Advocate for Respondents No.2 to 5.
Mr.A.S. Navale i/b. Ms. V.A. Navale, Advocate for Respondent No.7.

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CORAM : R. G. KETKAR, J.

DATE : 06th FEBRUARY, 2017

P.C.

1. Heard Mr.Sandesh Patil, learned counsel for the petitioners, Mr. Yogesh Dandekar, learned Counsel for respondents No.2 to 5 and Mr.A.S. Navale, learned Counsel for respondent No.7, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'applicants' have challenged the judgment and order dated 8.10.2015 passed by the learned 4th Jt. Civil Judge, Junior Division, Vashi, Navi Mumbai below Exhibit-38 in Regular Civil Suit No.207/2015. By

that order, the learned trial Judge rejected the application filed by the applicants under Order I Rule 10(2) of C.P.C. for impleading them as defendants No.9 and 10.

3. Respondents No.1 to 5 have instituted Regular Civil Suit No.207/2015 (for short, 'first suit') against defendant No.1 M/s. Perfumatic Chemical Export Ltd., defendant No.2 Amarlal Pesumal Thakur, defendant No.3 Assistant & Land Survey Office, CIDCO, defendant No.4 Estate Officer, CIDCO, defendant No.5 Managing Director CIDCO, defendant No.6 Ward Officer 'D' Ward Turbhe, defendant No.7 Town Planning Officer, Navi Mumbai Municipal Corporation and defendant No.8 Commissioner, Navi Mumbai Municipal Corporation *inter alia* praying for declaration that they are owners of plots No.41, 42 and 43 more particularly described in paragraph-2 of the plaint; for declaration that the deed of assignment dated 5.2.1993 and 22.12.2008 and two General Power of Attorney dated 17.4.1990 are null, void, illegal, unlawful, unenforceable and not binding on them; for declaration that issuing direction to defendants No.3 to 5, namely, CIDCO to cancel the tripartite agreement, if executed between defendant No.1 with defendants No.3 to 5 and to transfer the property in the name of the plaintiffs from

deleting name of defendant No.1, amongst other prayers.

4. The applicants have instituted Special Civil Suit No.457/2015 (for short, 'second suit') against plaintiffs No.1 to 5 as also CIDCO, Navi Mumbai and M/s. Perfumatics Chemicals Exports Pvt. Ltd. *inter alia* for declaration that the tripartite agreements dated 22.12.2008 in respect of plots No.41 and 43 are illegal, bad in law and null and void and not binding upon them as also for cancellation of the gift deed dated 22.5.2014 executed by defendants No.1, 9 and 12 in favour of defendants No.10 and 11 in that suit, amongst other prayers.

5. The applicants took out application under Order I Rule 10(2) of C.P.C. in R.C.S. No.207/2015 for their impleadment as defendants No.9 and 10. By the impugned order, the learned trial Judge has rejected the application. It is against this order, the applicants have instituted the present Petition.

6. In support of this Petition, Mr. Patil submitted that in the first suit the plaintiffs have sought declaration that they are owners of plots No.41, 42 and 43. He submitted that the applicants are sons of plaintiff No.1 Babu. The applicants have instituted second suit. The properties are ancestral properties

and, therefore, the applicants have right, title and interest in respect of the ancestral properties which were acquired by CIDCO and in lieu thereof plots No.41, 42 and 43 were allotted to plaintiff No.1. Their rights are vitally affected and, therefore, the application filed by them ought to have been allowed.

7. He submitted that the defendants in the first suit may collude with the plaintiffs in that suit and will concede for granting relief in terms of prayer clause (a) of the plaint. In that event the interest of the applicants will be jeopardized.

8. On the other hand, the learned Counsel for the respondents supported the impugned order.

9. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In order to appreciate the submissions of Mr. Patil, it is necessary to reproduce prayer clauses (a) to (c) in the first suit, viz., R.C.S. No.207/2015, which are to the following effect :

“(a) Hon'ble Court may be pleased to declare that, the plaintiffs are owner of the suit properties / plots bearing its plot no.41, 42 & 43 as stated above.

(b) Hon'ble Court may be pleased to declare & decreed that, Deed of Assignment dated :-

5/2/1993, and 22/12/2008 & Two General Power of Attorney, dated 17/4/1990, are null & void, illegal, unlawful, unenforceable & not binding and same may be set aside;

- (c) Hon'ble Court may be pleased to declare, order and give direction to CIDCO def. no.3 to 5, to cancel the tri-party agreement if it is executed between def. No.1 with def. no.3 to 5, and further direct them to transfer the suit properties in the name of plaintiffs from deleting the name of def. no.1, consequently restore the original position of suit properties which was standing in the name of plaintiffs;"

10. Unless and until the plaintiffs succeed in obtaining prayer clauses (b) and (c), they cannot get the relief in terms of prayer clause (a). Thus the relief in terms of prayer clause (a) is dependent upon the plaintiffs establishing their claim in respect of prayer clauses (b) and (c). That apart, the applicants have instituted suit challenging the Deed of Assignments as also Gift Deed. In other words, the rights of the applicants are secured/safeguarded in the suit instituted by them. While rejecting the application, the learned trial Judge has observed that the subject matter of the first suit is not whether the suit properties are ancestral or not. The plaintiffs in the first suit have also not sought any relief against the applicants and consequently they cannot be held as necessary parties. The

learned trial Judge also observed that the plaintiffs being *dominus litis* cannot be compelled to sue a person against whom he does not seek any relief. The issues in the first suit do not cover the issue whether said property is ancestral or not. The learned trial Judge, therefore, held that the presence of the applicants is also not necessary for deciding the controversy raised between the parties. In other words, the applicants are also not a proper party.

11. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

12. Mr. Patil states that the applicants will file appropriate application for clubbing both the suits together. Statement of Mr. Patil is recorded. Order accordingly.

(R. G. KETKAR, J.)