

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4397 OF 2016

M/s.Rashmi Properties

... Petitioner

Vs.

Shri Pyarasaheb Keshrisingh Rana
since deceased, through
Shri Sajid Pyarasaheb Rana & Ors.

... Respondents

Mr.Sandeep Mishra for the Petitioner
Ms.Swati Sawant with Shravani Dalvi for Resp. No.2
Mr.M.S. Lagu with Mr.S.C. Wakankar for Resp. No.3
Mr.D.C. Pathak for Resp. No.4

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 20, 2017**

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally at the stage of admission.
2. This Writ Petition is directed against the order dated 10.2.2016 passed by the learned Joint Civil Judge, Junior Division. Thane in application below exhibit 43 in RCS No.516 of 2014. The learned Judge has allowed the application of a third party i.e., now the Respondent No.4, in the present petition, to be added as a party defendant in the suit.

3. The learned Counsel for the Petitioner has submitted that the petitioner / plaintiff has filed a suit for injunction simpliciter in respect of suit land which he has purchased by a registered sale deed in the year 1983 from one Pyarasaheb Keshrisingh Rana, who has purchased the suit land from the original owner one Rose Alex Hendricks. He submitted that he is an owner and in possession of the said suit land and the original defendants, who are constructing on the adjacent plot are encroaching upon his land and, therefore, he filed a suit for injunction against them. The learned Counsel further submitted that Respondent No.4 claims that he has purchased the suit land from the original owner Rose Alex Hendricks but it is under an MoU of 1992 between him and Rose Alex Hendricks and he claims his right on the basis of the said MoU. He further submitted that the plaintiff is not seeking any relief against respondent No.4 and the plaintiff has sought order under Order 2 Rule 2 of the Civil Procedure Code to add further reliefs if required in future. He submitted that as on today, no relief is sought against respondent No.4 and therefore, the order allowing him as a party is to be set aside.

4. The learned Counsel for Respondent No.4 who is the main contesting party, submitted that Respondent No.4 is a real owner of the said plot as he is directly purchased the said land by registered sale deed from the original owner Rose Alex Hendricks in 1992. He further submitted that the registered sale deed executed between the petitioners and the transaction between Pyarasaheb Rana and the original owners are all bogus. These are the fraudulent documents and Respondent No.4 as on today, is in possession of the suit land.

5. Read the prayers in the plaint, the order and the heard submissions. Respondent No.4 claims his right i.e., ownership and the possession on the basis of registered sale deed of 1992 which he had entered into with the original owner. The plaintiff also claims his possession and ownership in respect of the suit land on the basis of the registered sale deed of 1983. In the present suit, the plaintiff does not seek any relief in respect of ownership, title or possession but it is a suit for simpliciter injunction which is not sought against Respondent No.4 but it is against other respondents i.e., defendant Nos.1 and 2. Under such circumstances, even if the injunction order is granted in his favour,

it will not be against respondent No.4 even if he is in possession of the suit land. If the parties have dispute over the possession of the suit land and in respect of ownership, then, they may file proceedings accordingly and seek reliefs accordingly.

6. Under such circumstances, in the present suit for injunction, as the plaintiff does not seek any relief or simpliciter injunction against respondent No.4, respondent No.4 is not a necessary and proper party. The impugned order is hereby set aside. Writ Petition is allowed. Rule made absolute in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)