

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7888 OF 2016

M/s. Avi Developers & Ors. ... Petitioners
Vs.
Dilipsinh Dinkarrao Mandlik & Ors. ... Respondents

Mr. Sandeep S. Koregave, Advocate for the petitioners.
Mr. S.S. Patwardhan, Advocate for respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 7th July, 2017.

P.C.:

Rule. Rule made returnable forthwith. This Writ Petition is finally heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 10th September, 2015 passed by the Joint Civil Judge Senior Division, Kolhapur below Exhibit 107 in Special Civil Suit No. 143 of 2007. Respondent nos.1 and 2/original plaintiffs are the landlords and they have filed Special Civil Suit No. 143 of 2007 for cancellation of Power of Attorney, development agreement and registered sale deed dated 2nd February, 2007 which was executed by respondent no. 1 in favour of respondent nos. 4, 5 and 6 and also prayed for declaration that the defendants have no right and title in the said suit land. The petitioners are the third parties and have moved an application under

Order 1 Rule 10 that they be added as party-defendants in the said suit, which was rejected by the Court. Hence, this Writ Petition.

3. The learned counsel for the petitioners has submitted that respondent nos. 1 and 2/plaintiffs have entered into an Agreement dated 30th April, 2008 with the petitioners and the petitioners have paid Rs.55,00,000/-, so they are in possession of the suit property since 18th March, 2009. The learned counsel submitted that during the pendency of the suit, this transaction has taken place and the petitioners, being transferee *lis pendens*, they have to be made party-defendants in the suit. It is further argued that if at all the suit is decreed or even dismissed, then their right as a purchaser are going to be affected. It is further submitted that the petitioners have deposited the amount of Rs.70,00,000/- in Special Civil Suit No. 422 of 2011 which the petitioners have filed against the original plaintiffs/respondent nos. 1 and 2. The learned counsel has submitted that the petitioners are the necessary parties. He relied on the judgment of Hon'ble Supreme Court in the case of **Thomson Press (India) Ltd. vs. Nanak Builders and Investors Pvt. Ltd., & Ors., reported in 2013) 5 SCC 397**. Alternatively, the learned counsel submitted that the two suits are to be clubbed together.

4. The learned counsel for the respondent nos. 1 and 2 submitted that the respondent nos. 1 and 2/plaintiffs have filed the suit for declaration of his right as owner and also about the cancellation of Power of Attorney, Development Agreement and Registered Sale Deed against other defendants. He submitted that the relief sought against the respondents/defendants are not going to affect the petitioners in any manner and, therefore, the petitioners are not the necessary parties. He submitted that the petitioners are not relevant in the suit filed by the respondents/plaintiffs.

5. Heard the submissions of both the counsel. Perused the impugned order below Exhibit 107. The petitioners may be having the transaction in respect of same land with the original plaintiffs/respondent nos. 1 and 2, however, the petitioners have filed separate Special Civil Suit No. 422 of 2011 for specific performance against the respondent nos. 1 and 2/original plaintiffs. Thus, the petitioners are pursuing the said Special Civil Suit for execution of sale deed against the respondent nos. 1 and 2/plaintiffs. Special Civil Suit No. 143 of 2007 is filed by the plaintiffs for cancellation of the Development Agreement, registered sale deed and Power of Attorney. Thus, these reliefs are only against the defendants. Considering the nature of the suit and the fact that the petitioners

have rightly filed separate suit, presence of petitioners are not required for adjudication of the issues involved in the present suit. So also, even if the suit is decreed or dismissed that is not going to affect the right, interest or claim of the petitioners for which they are litigating in Special Civil Suit No. 422 of 2011, as it is totally a different and separate issue between the petitioners and respondent nos. 1 and 2/original plaintiffs.

6. In the case of **Thomson Press (India) Ltd.** (*supra*) the transferee/ purchaser is to be impleaded as party in the pending suit for specific performance, however, it is to be considered on the basis of the facts and circumstances of the case. In the present case, already the petitioners have filed separate suit against original plaintiffs. Under such circumstances, the ratio laid down by the Hon'ble Supreme in the case of **Thomson Press (India) Ltd.** (*supra*) is not helpful to the present case. Hence, nothing can be faulted with the order of the trial Court. Writ Petition is dismissed.

7. The prayer of transferring the suit from one court to another is also rejected.

(MRIDULA BHATKAR, J.)