

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5917 OF 2017

Ms Daksha Keshrichand Jhaveri & Ors. ..Petitioners
vs.
Mr. Nikhilesh Keshrichand Jhaveri & Ors. ..Respondents

WITH
WRIT PETITION NO. 13794 OF 2016

Mr. Nikhilesh Keshrichand Jhaveri & Ors. ..Petitioners
vs.
M/s. New Era Fabrics Ltd. & Ors. ..Respondents

Mr. G. S. Godbole with Ms Mamta Sadh i/b. Ms Poonam Utekar
for Petitioners in WP 5917 of 2017.

Mr. Gautam Ankhad i/b. Ms Sushma Singh for Petitioners in WP
13794 of 2016 and for Respondent Nos. 4 to 6 in WP 5917 of 2017.

Mr. P. K. Dhakephalkar – Senior Advocate with Mr. J. P. Narula i/b.
Jhangiani Narula & Associates for Respondent No. 7 in WP 13794
of 2016.

Aparna Devkar i/b. M. P. Vashi & Associates for Respondent No. 1
in WP 13794 of 2016.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 15 September 2017
Date of Pronouncing the Judgment : 20 September 2017

COMMON JUDGMENT :-

1] Heard learned counsel for the parties. They agree that these
two petitions can be disposed of with a common order.

2] Accordingly, Rule in both the petitions. With the consent of

and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] In writ petition no. 13794 of 2016, the challenge is to the order dated 19th October 2016 made by the Small Causes Court (trial court) directing the plaintiff Nos. 4 to 6 (petitioners in writ petition no. 13794 of 2016) in T.E. & R. Suit No. 48/62 of 2009 to implead Gnani Investment & Trading Co. Pvt. Ltd. (GITCPL) (applicant in application at Exhibit No. 321 of 2016 in T.E. & R. Suit No. 48/62 of 2009) as co-plaintiff.

4] In writ petition No. 5917 of 2017, the challenge is to the order dated 14th March 2017 made by the trial court in the aforesaid suit, this time, at the instance of plaintiff No. 4 in the suit, ordering the deletion of plaintiff Nos. 2, 7 to 10 and 12 (petitioners in writ petition No. 5917 of 2017).

5] The T.E. & R. Suit No. 48/62 of 2009 was instituted by, in all, 12 plaintiffs against the 6 defendants, seeking inter alia eviction of the defendants from the suit premises and other consequential reliefs.

6] There is no dispute that during the pendency of this suit,

plaintiff Nos. 2, 7 to 10 and 12 (petitioners in writ petition No. 5917 of 2017) have assigned their rights in the suit premises in favour of GITCPL. There is some dispute between these plaintiffs and the plaintiff Nos. 4 to 6, as to whether these plaintiffs have assigned their entire interest in the suit premises to GITCPL or whether, these plaintiffs have transferred only 75% of their interest in the suit premises to GITCPL.

7] On the basis of three separate deeds of assignment, GITCPL took out an application (Exhibit 321) before the trial court seeking a direction to the plaintiffs in the suit to implead GITCPL as plaintiff no. 13 in the suit i.e. a co-plaintiff along with the remaining 12 plaintiffs. By impugned order dated 19th October 2016, the learned trial Judge has allowed GITCPL's application at Exhibit 321 and directed plaintiff Nos. 4 to 6 to implead GITCPL as 'co-plaintiff' in the suit. The trial court issued this direction only to plaintiff Nos. 4 to 6, because, by separate order dated 14th March 2017 below Exhibit 330, trial Court, has ordered deletion of plaintiff Nos. 2, 7 to 10 and 12. As noted earlier, the order dated 14th March 2017 is a subject matter of challenge in writ petition No. 5917 of 2017.

8] Mr. Ankhad, learned counsel for the petitioners in writ petition No. 13794 of 2016 contends that the impugned order dated 19th

October 2016 made by the learned trial Judge is *ex facie* in excess of jurisdiction. He submits that the court ought not to foist a party as a co-plaintiff, upon the plaintiffs who had originally instituted the suit. He submits that if the impugned order is sustained the very progress of the suit will be embarrassed. He submits that there is clear conflict of interest between plaintiff Nos. 4 and 6 on one hand and GITCPL on the other. To require the suit to proceed with GITCPL as a co-plaintiff, is a sure recipe for disaster. He relies upon the decision of this Court in ***Bayajabai Ganpat Patil vs. Keval Rambhau Patil & Anr.***¹

9] Mr. Dhakephalkar, learned Senior Advocate for GITCPL defends the impugned order dated 19th October 2016 by submitting that GITCPL is an assignee from majority of the plaintiffs in the suit. He submits that in terms of Order XXII Rule 10 of CPC, the assignee, as a matter of right is required to be made a party to the suit, if it so desires. He further submits that at the stage of grant of leave under Order XXII Rule 10 of CPC a detailed enquiry as to the validity or the extent of the assignment is totally inappropriate. *Prima facie* satisfaction is all that is required. Mr. Dhakephalkar submits that in case GITCPL is not impleaded as a co-plaintiff, there is possibility that the plaintiff Nos. 4 to 6 may either abandon the suit or collude with the defendants in the suit, to the utmost

1 1953 ILR (Bombay Series) 424

detriment of GITCPL. Mr. Dhakephalkar submits that there is absolutely no jurisdictional error in the impugned order dated 19th October 2016 and this Court, may therefore not interfere with the same. Mr. Dhakephalkar has relied upon the decisions in the case of ***Amit Kumar Shaw & Anr. vs. Farida Khatoon & Anr.***² and ***Sri Jagannath Mahaprabhu vs. Pravat Chandra Chatterjee & Ors.***³ in support of his submissions.

10] Mr. Godbole, learned counsel for the plaintiff Nos. 2, 7 to 10 and 12, who are the petitioners in writ petition No. 5719 of 2017 and for some of the respondents in writ petition No. 13794 of 2016 adopts the submissions made by Mr. Dhakephalkar. He further submits that the decision in *Bayajabai Patil* (supra) is clearly distinguishable, because that was a case concerning a sole plaintiff, whereas, in the present case, the suit was instituted by no less than 12 plaintiffs and no less than 6 plaintiffs support the impleadment of GITCPL as a co-plaintiff in the suit. Mr. Godbole submits that the courts have extensive powers under Order I Rule 10 of CPC to strike out or add parties. The exercise of such powers is discretionary and the learned trial Judge has exercised the discretion reasonably when it comes to making of order dated 19th October 2016 but exercised discretion quite unreasonably when it

2 (2005) 11 SCC 403

3 AIR 1992 Orissa 47 (Full Bench)

comes to making the impugned order dated 14th March 2017 and ordering the striking out of plaintiff Nos. 2, 7 to 10 and 12, on the spacious plea that these plaintiffs have assigned some of their rights in the suit premises in favour of GITCPL. Mr. Godbole also joins Mr. Dhakephalkar in expressing apprehensions that the plaintiff Nos. 4 to 6 in the suit might either abandon the suit or compromise the suit with the defendants, so as to prejudice not only GITCPL but also the plaintiffs whom he represents. Mr. Godbole relies upon the decision in the case of ***Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.***⁴ in support of his submissions.

11] Mr. Godbole, in support of writ petition No. 5917 of 2017 submits that the plaintiff Nos. 2, 7 to 10 and 12 have not assigned their entire rights in the suit premises in favour of GITCPL. He submits that they have assigned only 75% of their rights to GITCPL. In such circumstances, Mr. Godbole submits that there was no question of ordering deletion of these plaintiffs from the array of parties in the suit. Mr. Godbole relying upon ***Dhurandhar Prasad Singh vs. Jai Prakash University & Ors.***⁵ submits even if these plaintiffs are taken to have assigned their entire rights in the suit premises in favour of GITCPL (which he contends they have

4 (2010) 7 SCC 417

5 (2001) 6 SCC 534

not) still, these plaintiffs have the right to remain in the carriage of the suit, because, there is implied covenant to assign a good title in favour of the assignee. Mr. Godbole submits that the impugned order dated 14th March 2017, by which, these plaintiffs have been ordered to be deleted is in excess of jurisdiction or in any case constitutes a patently unreasonable exercise of jurisdiction.

12] Mr. Ankhad, learned counsel for the petitioners in writ petition No. 13794 of 2016 and some of the respondents in writ petition No. 5917 of 2017 joints issues of the submissions of Mr. Dhakephalkar and Mr. Godbole. He submits that plaintiff Nos. 2, 7 to 10 and 12 have chosen to assign their entire rights in the suit premises in favour of GITCPL. Accordingly, they cannot be permitted to continue as parties in the suit since, they have no surviving interest in the suit premises. However, without prejudice, he submits that the plaintiff Nos. 4 to 6 will have no objection if GITCPL as also plaintiff Nos. 2, 7 to 10 and 12 remain in the suit as defendants. Mr. Ankhad submits that in view of the conflicting positions, it will not be possible for the plaintiffs to be represented by one and the same Advocate. He submits that even otherwise, several plaintiffs in a suit cannot be permitted to be represented by several Advocates. In any case, he submits that this will completely frustrate and embarrass the trial in the suit. He submits that such

embarrassment will only benefit the defendants to the suit. He relies on ***Ram Gopal Sah vs. Dhirendra Nath & Anr.***⁶, ***Sm. Sukumari Debi & Anr. vs. Shri Ramdas Ganguli***⁷, ***Venkatrao A. Pai and Sons Ltd. vs. Narayanlal Bansilal***⁸ and ***Chitralkha Builders & Anr. vs. G.I.C. Employees Sonal Vihar Co-operative Housing Society Ltd. & Ors.***⁹

13] The rival contentions now fall for determination.

14] There is a serious dispute as to whether the plaintiff Nos. 2, 7 to 10 and 12 have assigned their entire rights in the suit premises in favour of GITCPL as contended by Mr. Ankhad who represents plaintiff Nos. 4 to 6 in the suit or whether the plaintiff Nos. 2, 7 to 10 and 12 have only assigned 75% of their rights to the suit premises as contended by both Mr. Godbole and Mr. Dhakephalkar. GITCPL relying upon the deeds of assignment, has applied for impleadment and relied upon the provisions in Order XXII Rule 10 of CPC. At the stage of deciding whether leave is to be granted under Order XXII Rule 10 of CPC, a detailed enquiry is really not contemplated. Only a *prima facie* satisfaction would normally suffice. From this perspective, it will be only appropriate that both GITCPL as well as plaintiff Nos. 2, 7 to 10 and 12 continue as parties in the suit. The

6 AIR 1981 Patna 298

7 AIR 1994 Calcutta 85

8 AIR 1961 Bom. 94

9 2005 (4) Mh. L.J. 360

question really is about capacity in which they ought to continue in this suit.

15] In *Dhurandhar Prasad Singh* (supra), the Supreme Court has held that under Order XXII Rule 10 of CPC when there has been a devolution of interest during pendency of a suit, the suit may by leave of the Court be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject matter of the litigation by assignment or creation or devolution of interest *pendente lite* to apply to the court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If the party does not ask for leave he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record and yet as held in ***Moti Lal vs. Karrabuldin***¹⁰, he will be bound by the result of the litigation even he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.

16] There is also no warrant for the proposition that a party to the suit who may have assigned its interest in favour of a third party, is required to be necessarily struck out from the array of parties. The party to the suit who may have assigned its interest is entitled to

10 ILR (1898) 25 Cal. 179

continue as a party in the suit, because, in a given case, the covenant to supply a good title to the assignee and to assign property free from any encumbrances or litigations may continue upon such party. In the present case, there is a serious dispute as to whether the plaintiff Nos. 2, 7 to 10 and 12 have assigned their 100% rights or the assignment is restricted to only 75% of the rights which they claim to have in the suit premises. In these circumstances, there was no justification to order deletion of the plaintiff Nos. 2, 7 to 10 and 12 from the array of parties in the suit.

17] Although, GITCPL is entitled to become a party, the learned trial Judge, was not at all justified in impleading the GITCPL as 'co plaintiff' particularly when there is a serious conflict of interest between plaintiff Nos. 4 to 6 on one hand and GITCPL on the other. Although, the exercise of power under Order I Rule 10 of CPC is discretionary, the discretion in such matters, cannot be exercised in unreasonable manner. In fact, this is what is held in *Mumbai International Airport Pvt. Ltd.* (supra) upon which reliance was placed by Mr. Godbole. In *Bayajabai Patil* (supra) Chief Justice M. C. Chagla, in the context of exercise of power under Order I Rule 10 of CPC has held that a party may be added as a co-plaintiff, when the plaintiff does not dispute the right of the co-plaintiff to the decree which might be passed; but where his right to property in suit is

disputed by the plaintiff, the proper procedure is to join him as a defendant and not as a co-plaintiff. The principle in such matters appears to be that the original plaintiff, who is even otherwise *dominus litis*, cannot be compelled to proceed with the suit with a co-plaintiff, with whom, such original plaintiff may have a conflict of interest.

18] There is also substance in the contention of Mr. Ankhad that there will be considerable difficulties in the carriage of the suit, if, various plaintiffs insist upon engaging different Advocates to represent their own conflicting interest in the suit. In such a situation, the trial, or for that matter further proceedings in the suit will be embarrassed. In *Venkatrao A. Pai and Sons Ltd.* (supra), the learned Single Judge of this Court has held that two or more persons would agree to join as co-plaintiffs in a suit only if there is any common question of law or fact between them, and their respective claims arise out of the same transaction. The law permits these different plaintiffs to join in one action by filing one common plaint only with a view to save multiplicity of suits and consequent wastage of time of the court. If this is the object of allowing several persons to join as plaintiffs in one action, the object would be frustrated if each of these persons is allowed to be represented by a separate counsel and each one of the counsel is

also permitted to be in charge of the case for his own client. If such things are permitted, the waste of the time of the Court, which is otherwise intended to be saved by allowing several persons to join another as co-plaintiffs in one action, would not at all be saved. On the contrary, far more time would be taken and a number of unnecessary complications would arise in trying one such action if every one of the plaintiffs is allowed to be represented by his own counsel and each counsel is allowed to conduct the case separately for his own client. In this case, learned Single Judge of this Court has taken cognizance of the traditions at the bar both, in the Bombay High Court as well as in England that in cases where more than one person join as co-plaintiffs in one action, they should all be jointly represented by one or more counsel. It may be that at some stage or the other of the action some of the plaintiffs might feel that there is a conflict of interest between them and the other plaintiffs. Just for that reason, however, as the plaintiffs cannot be allowed to engage different counsel. If they so wish that might will apply to the court to transpose them as defendants. The learned Single Judge of this Court has referred to **Wedderburn vs. Wedderburn**¹¹ decided as far back as in 1853, where Master of the Rolls observed (p. 993) :

“..... When persons undertake the prosecution of a suit, they must make up their minds whether they will become Co-plaintiffs; for if they do, they must act together. I cannot allow

11 (1853) 51 E.R. 993

one of several plaintiffs to act separately from and inconsistently, with the others.”

19] Applying the aforesaid principles to the fact situation in the present case, the direction issued to plaintiff Nos. 4 to 6 in the impugned order dated 19th October 2016 to implead GITCPL as co-plaintiff in the suit is quite unsustainable and is hereby set aside. However, as noted earlier, since GITCPL claims assignment from plaintiff Nos. 2, 7 to 10 and 12 there can be no difficulty in ordering the impleadment of GITCPL as a defendant No. 7 in the suit. Plaintiff Nos. 4 to 6 are accordingly directed to implead GITCPL as defendant No. 7 in the suit. Necessary amendment to be carried out within a period of two weeks from the date of this order.

20] Since, there is a dispute as to whether the plaintiff Nos. 2, 7 to 10 and 12 have assigned their entire rights to the suit premises in favour of GITCPL or not and further even assuming, that they have, there is no reason to strike out these plaintiffs from the array of the parties. However, considering the changed scenario where, these plaintiffs, have assigned a major portion of their interest in favour of GITCPL and further considering that it is only appropriate that GITCPL is impleaded as a defendant in the suit, it will be only appropriate that the plaintiff Nos. 2, 7 to 10 and 12 are also transposed as defendants in the suit. Such a course of action is

permissible under Order I Rule 10 of CPC. On account of the assignment of their rights or in any case their substantial rights, there has arisen a conflict of interest between them and plaintiff Nos. 4 to 6 who have not chosen to assign their rights in the suit premises in favour of GITCPL. If continuance of GITCPL and plaintiff Nos. 4 to 6 as '*co-plaintiff*' will result in embarrassment to the further proceedings in the suit, by the same logic, the continuance of plaintiff Nos. 2, 7 to 10 and 12 who have on their own say, assigned 75% of their rights to the suit premises in favour of GITCPL, will also constitute an embarrassment to the further progress in the suit. The same issue of representation by separate set of lawyers is bound to arise apart from several other inevitable complications. Since, the plaintiff Nos. 4 to 6 have chosen not to assign their rights, it is only appropriate that they continue in the carriage of the suit the GITCPL as well as the plaintiff Nos. 2, 7 to 10 and 12 are impleaded as defendants in the suit.

21] In this case, the suit is for eviction of the tenants. In such a suit, there is really no scope to adjudicate in *inter se* disputes between the plaintiffs themselves. Therefore, the presence of GITCPL or for that matter plaintiff Nos. 2, 7 to 10 and 12 who have on their own say assigned 75% of their rights to the suit premises in favour of GITCPL, as defendants may really make no substantial

difference or impact. However, it is obvious that disputes have arisen between plaintiff Nos. 2, 7 to 10 and 12 on one hand and plaintiff Nos. 4 to 6 on the other, mainly on account of the former set assigning their rights or substantial portion of their rights to GITCPL. It is also possible that the former set and GITCPL seek to pressure plaintiff Nos. 4 to 6 to also assign their rights and in furtherance of this, seek carriage of this suit. However, the interests of justice will be met if both the impugned orders are modified and plaintiff Nos. 4 to 6 are directed to implead GITCPL as defendant No. 7 and to transpose plaintiff Nos. 2, 7 to 10 and 12 as defendant Nos. 8 to 13 in the suit.

22] There is really no basis for the apprehension that plaintiff Nos. 4 to 6 might abandon the suit or collude with the defendant tenants. In any case, suitable directions can always be issued to allay such apprehensions. In the light of apprehensions expressed by Mr. Dhakephalkar and Mr. Godbole, the directions are issued to the trial Court not to grant leave to plaintiff Nos. 4 to 6 to withdraw or abandon the suit without furnish giving at least 30 days prior to notice to GITCPL and plaintiff Nos. 2, 7 to 10 and 12 (who are ordered to be impleaded as defendants) of their intention to do so. In such an eventuality the GITCPL as well as the plaintiff Nos. 2, 7 to 10 and 12 can always apply to the court for their transposition as

plaintiffs if they wish to continue with the suit against the original defendants.

23] Similarly, if at any stage, of the conduct of the suit, GITCPL or the plaintiff Nos. 2, 7 to 10 and 12 apprehend collusion, they are always at liberty to apply to the trial court for appropriate orders, including orders for transposition. No doubt, such application, if made, will be considered on its own merits and in accordance with law. This will substantially allay the apprehensions expressed by Mr. Dhakephalkar and Mr. Godbole even though, it is necessary to note that at least at present, there does not appear to be any basis for such apprehensions.

24] It is settled position in law that the civil court has ample powers to mould the relief. In the suit as instituted, there is really no scope for resolution of *inter se* disputes between the plaintiffs. However, in case there are any apprehensions that in the course of resolution of disputes with the tenants, there might arise some impact upon the *inter se* rights between the plaintiffs, the civil court, has ample powers to mould the reliefs and clarify the position. The mere circumstance that some of the landlords are impleaded as defendants, will really not make any significant impact. If ultimately, a case is made out to secure eviction of the original defendants –

tenants, the trial Court can always mould relief and direct the delivery of possession of the suit premises, not just to plaintiff Nos. 4 to 6 but also to plaintiff Nos. 2, 7 to 10 and 12 and GITCPL, who are now ordered to be impleaded as defendant Nos. 7 to 13. This is yet another reason as to why powers under Order I Rule 10 of CPC are required to be exercised so as to implead GITCPL and plaintiff Nos. 2, 7 to 10 and 12 as defendants Nos. 7 to 13.

25] These petitions are therefore disposed of with the following order :

(A) The impugned order dated 19th October 2016 to the extent it directs plaintiff Nos. 4 to 6 to implead GITCPL as co-plaintiff is set aside. Instead, plaintiff Nos. 4 to 6 are directed to implead GITCPL as defendant No. 7 in the suit;

(B) The impugned order dated 14th March 2017 made by the learned trial Judge ordering deletion of plaintiff Nos. 2, 7 to 10 and 12 is hereby set aside. Instead, the plaintiff Nos. 4 to 6 are directed to transpose plaintiff Nos. 2, 7 to 10 and 12 as defendant Nos. 8 to 13 in the suit;

(C) Plaintiff Nos. 4 to 6 to carry out the aforesaid amendments within a period of two weeks from today.

(D) In case, the plaintiff nos. 4 to 6 at any stage desire to abandon or withdraw the suit, then, they shall give 30 days

prior notice to the newly impleaded / transposed defendant Nos. 7 to 13 of their intentions to do so. Defendant Nos. 7 to 13, if they so choose, may then apply to the trial Judge to transpose them as plaintiffs in the suit;

(E) If at any stage the defendant Nos. 7 to 13 apprehend collusion between the plaintiff Nos. 4 to 6 and the original defendant Nos. 1 to 6, the defendant Nos. 7 to 13 will be at liberty to take out appropriate application seeking appropriate orders, including, their transposition as plaintiffs in the suit. Such, application, if made, will be considered by the trial court on its own merits and in accordance with law;

(F) Rule is made partly absolute in both these petitions to the aforesaid extent.

(G) There shall be no order as to costs.

(H) All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka