

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

WRIT PETITION NO. 1859 OF 2016

Shri Guddu Sahab R. Mujawar@ Yunus R. Mujawar ... Petitioner.

Versus

Mr. Vikrant Vikas Raikar & ors. ... Respondents.

Mr. Uday P. Warunjikar, advocate for petitioner.

Mr. Tushar N. Sonawane, advocate for respondent.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : OCTOBER 5, 2017

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein had filed an application seeking impleadment as a necessary party in Special Civil Suit No. 568 of 2014 under Order 1 Rule 10 of the Code of Civil Procedure, 1908. It is the contention of the Petitioner that Keshav Dharma Patil and Gana

Dharma Patil were the exclusive owners of the land bearing Survey No. 277(part) which is the suit property. It is the contention that the legal heirs of Keshav Dharma Patil and Gana Dharma Patil had executed an agreement in favour of the present petitioner on 3/6/2010. That Keshav Dharma Patil had died intestate on 5/7/1993 whereas Gana died intestate in the year 1958. The Petitioner is the plaintiff in Special Civil Suit No. 282 of 2013 against Keshav Dharma Patil. The Petitioner was impleaded as party defendant. It was therefore, prayed that the Petitioner be arraigned as a party to the suit.

4 Needless to say that the suit filed by the Petitioner is prior in point of time, as it is registered as Special Civil Suit No. 282 of 2013. The suit property mentioned in both the suits is the same. The earlier suit is filed against the legal heirs of Keshav Dharma Patil. The Petitioner was seeking a decree of specific performance. The learned Joint Civil Judge, Sr. Division, Thane by an order dated 9th March, 2015 has held that since the Petitioner is not a party to the proceedings, he cannot be impleaded as a party defendant in Special

Civil Suit No. 568 of 2014. It is also held by the learned Joint Civil Judge, Sr. Division, Thane that in a suit for specific performance neither the plaintiff nor the defendants can file an application seeking impleadment to the pending suit. Even if an application is filed, it would be subject to the judicial discretion. According to the learned Court, the Petitioner was not a necessary party to RCS No. 568/14.

5 Upon considering the facts of the case it is clear that Special Civil Suit No. 568 of 2014 is a subsequent suit, whereas the suit for specific performance filed by the Petitioner was filed prior in time and he was seeking the relief of specific performance against the heirs of Keshav Dharma Patil who happened to be the 50% owner of the suit property. In the interest of justice and to determine the issue in both the suits, the Petitioner would be a necessary party.

6 In view of this, the order dated 9/3/2015 passed by Joint Civil Judge, Senior Division, Thane is hereby quashed and set aside. The learned Joint Civil Judge, Senior Division, Thane shall implead the

present petitioner as a party defendant to Special Civil Suit No. 568 of 2014 and proceed with further stages of the proceedings forthwith.

7 It is made clear that this Court has only observed to the extent that the Petitioner is necessary party and has not determined the rights of the party to the said suit.

8 Rule is made absolute in the above terms and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)