

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

WRIT PETITION NO. 7907 OF 2013

Mahila Samajik Samta Parishad

.. Petitioner

v/s.

Mrs. Ranjana Ashok Gaikwad

.. Respondent

Mr. Kishor S. Patil for the petitioner

None for the respondent

CORAM : M.S. SANKLECHA, J.

DATED : 27th SEPTEMBER, 2017

P.C.

1. This petition under Article 227 of the Constitution of India challenges the order dated 21st February, 2013 passed by the Additional Civil Judge, Junior Division, Phaltan. The impugned order rejects the petitioner's (original defendant's) application seeking to add the original owner of the suit property, one Mr. Jagannath Gaikwad as a party defendant. The impugned order rejects the application essentially on the following grounds:

- (a) that no relief is sought in the plaint against the original owner Mr. Jagannath Gaikwad; and
- (b) that the present suit can be decided in the absence of the original owner.

2. On 18th November, 2013, notice was issued to the respondent for admission and in the meantime, the proceedings before the trial Court had been stayed. The notice also informed the respondent that the petition is likely to be disposed of finally at the stage of admission. On 16th August, 2017 as none appeared for the Respondent. Therefore, by order dated 16th August, 2017, the petitioner was directed to inform the Respondents that the petition is fixed for hearing on 28th August, 2017. This was done. On 28th August, 2017, neither did the Respondent appear in person or through an advocate. Thereafter, the petition was adjourned and finally heard today.

3. The respondent herein is the original plaintiff, who had purchased the suit property from the petitioner by registered Sale Deed dated 6th March, 2000 for a consideration of Rs.35,000/-. The suit property in turn, being purchased by the petitioner from the original owner Mr. Jagannath Gaikwad. The respondent (original plaintiff) had filed the suit for recovery of the amount of Rs.66,000/- i.e. inclusive of interest on the principal amount of Rs.35,000/-. This without assailing the Sale Deed dated 6th March, 2000. It is the case of the respondent (original plaintiff) that after having purchased the suit property from the petitioner herein, she was unable to record her name in the

Revenue Records in view of the objection of the original owner Mr. Jagannath Gaikwad. Thus the suit for recovery of the amount paid to the Petitioner for purchase of the suit property.

4. It was in the aforesaid circumstances, that the petitioner herein moved the application to add Mr. Jagannath Gaikwad as a proper party to the present proceedings. This on the ground that the addition of Mr. Gaikwad would result in the Court effectively and completely adjudicating upon all the questions involved in the suit. The impugned order dated 21st February, 2013 proceeds to reject the application on the ground that no relief is sought against Mr. Jagannath Gaikwad and that the present suit could be decided even in the absence of Mr. Jagannath Gaikwad.

5. Mr. Patil, learned counsel for the Petitioner submits that in case Mr. Jagannath Gaikwad is made party to the proceeding, the entire dispute could be adjudicated upon, as according to the Petitioner the original owner of the suit property Mr. Jagannath Gaikwad cannot object to persons obtaining the suit property through the petitioner. It is submitted that the proposed Defendant is a proper party to these proceedings. Reliance is placed upon the decision of the Apex Court in

Kasturi Vs. Iyyamperumal and Ors. [2005 (3) Mh.L.J. 1] wherein it is observed that even though no reliefs are sought against a party, he could still be a proper party so as to effectually and completely adjudicate upon all the questions involved in the case. It is on above basis, it is contended that either petition be allowed or it be admitted for further consideration.

6. The impugned order records that this application to add Mr. Gaikwad as Defendant has been taken out after the evidence has been recorded and the suit is at the final stage. It further records that the main dispute is between the respondent (plaintiff) and the petitioner (defendant) as originally arrayed. In these circumstances, the impugned order holds that the original owner is not required to be added as a party defendant in the suit.

7. It is for the Plaintiff being *dominus litus* to decide whether he or she seeks to add the party in suit. Although in terms of Order 1 Rule 10 of the Code, the Court can direct addition of a party. The impugned order in facts of the case exercised its discretion in not allowing the amendment for bringing further parties to the suit at the stage of final arguments, when evidence was complete. Further the decision relied

upon in the case of *Kasturi (supra.)*, the Court, inter alia, after setting out the parameters for determining necessary and proper parties observed that a stranger to a contract would be beyond the scope of a suit for specific performance and cannot be added so as to convert the character of the suit from one into another. In the present case, the suit as filed is for recovery of amounts paid to the Petitioner. By adding the original owner of the suit land, who is not a part to the contract, the nature of the suit will undergo a change as the issue of title would arise.

8. In the above facts, there is no occasion to interfere with the impugned order and exercise my supervisory jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, petition dismissed. No order as to costs.

(M.S. SANKLECHA, J.)