

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7165 OF 2016

Audumbar Sadashiv Pawale & Anr. ... Petitioners
Vs.
Smt.. Lochanabai Jalindhar Dhage & Ors. ... Respondents

Mr. Dilip Bodake, Advocate for the petitioners.
Mr. B.S. Lawate, Advocate for respondent no.1.
Ms. Shraddha Pawar i/b. Suvarna Yadav, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **21st June, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the petitioner is heard finally and decided at the stage of admission.

2. This Petition is directed against the order dated 25th February, 2016 passed by learned Civil Judge Junior Division, Madha thereby rejecting the Application Exhibit 185 which was filed by the petitioner/3rd party to implead him in Regular Civil suit No. 177 of 1996. Earlier, the plaintiff has filed the Application under Order 1 Rule 10 that the present petitioner is to be added as party-plaintiff in the suit, however, the Application was rejected by order dated 7th February, 2015 and in the said order, it sounded as a reason for the

rejection that the third party has not filed the Application to implead him as party-plaintiff to the suit. The plaintiff has filed the suit for simplicitor possession. It is the case of the petitioner that during the pendency of the suit , on 27th February, 2013 the plaintiff sold some of the portion of suit property to him and therefore, his right to sue accrues.

3. The learned counsel for the respondents has submitted that earlier the similar application was made by the original plaintiff which was rejected and, therefore, second application was rightly rejected which was filed by the third party. He submitted that the title of the suit property is not ascertained and not yet fixed and during the pendency, the plaintiff has sold the property, therefore, the third party cannot be made party to the suit. He supported the order passed by the learned trial Judge.

4. Perused the impugned order. The petitioner/third party, as per his contention, has purchased some of the portion of suit property. On perusal of Application Exhibit 177, it is affirmed by the plaintiff himself. The suit is for possession and mandatory injunction. Admittedly, neither the plaintiff nor the third party are in possession of

the suit property. However, by virtue of this sale deed, the right to sue accrues and third party becomes proper and necessary party.

5. Writ Petition is allowed.

6. The petitioner is allowed to implead as party-plaintiff no. 2. Amendment to be carried out within four weeks.

(MRIDULA BHATKAR, J.)