

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

WRIT PETITION NO.8018 OF 2014

Naiknaware Developers Pvt. Ltd. ... Petitioner

Vs.

Arjun Sadashiv Parhad & Ors. ... Respondents

**with
WRIT PETITION NO.5462 OF 2014**

Smt.Anupama Anant Pol
through her power of Attorney holder
Shri Prashant Krushnarao Shitole & anr. ... Petitioners

Vs.

Shri Baburao Chindu Vidhate & Ors. ... Respondents

Mr.R.D. Soni i/b Ram & co. for the Petitioner in WP/8018/2014 for
Resp. Nos.6 and 7 in WP/5462/2014

Mr.Telesh Dande for Petitioners in WP/5462/2014 and for resp.
Nos.1 & 2 in WP/8018/2014

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 19, 2017**

P.C. :

1. These two writ petitions are heard together as the
defendants are one and the same and the same issue of deleting
the name of existing plaintiffs and substituting the name of the

power of attorney holder of the plaintiffs under Order I Rule 10(1) and (2) r/w Order VI Rule 17 and Section 151 of the Civil Procedure Code is involved.

2. In Writ Petition No.8018 of 2014, the order dated 18.3.2014 allowing the application below exhibit 61 and in Writ Petition No.5462 of 2014, the order rejecting the application of substitution below exhibit 81, passed by the learned Civil Judge, Junior Division, Pune, are challenged.

3. Respondent Nos.1 and 2 in Writ Petition No.8018 of 2015 are the original plaintiffs who filed Special Civil Suit No.6118 of 2012 in the Court of Civil Judge, Junior Division, Pune, for declaration that they are the owners of the suit land pursuant to the sale deed dated 10.3.2000, which is executed in their favour by the original defendant Nos.1 to 5, i.e., the land owners. A further declaration is sought that the development agreement and power of attorney executed in favour of the petitioner i.e., defendant No.6 in the suit by defendant Nos.1 to 5, are not legal and binding on the plaintiffs. They also sought that the sale deed executed by defendant No.6 in favour of the original defendant No.7 dated 30.12.2006 is not legal and not binding on the plaintiffs. The prayer

of mandatory injunction of removing the construction of land is also sought. In the said suit, an application under Order I Rule 10 of the Civil Procedure Code was preferred by the plaintiffs that his name is to be deleted and the name of the power of attorney holder is to be substituted. The said application was opposed by the defendants especially the petitioners, on the ground of misjoinder. However, it was allowed. In Writ Petition No.5462 of 2014, the plaintiff filed Special Civil Suit No.1011 of 2012 for declaration that the plaintiff is an owner of the suit land in terms of sale deed dated 21.3.2000, which was executed by the original defendant Nos.1 to 4 in favour of the plaintiff. Further, it was also sought that the sale deed dated 1.9.2002 executed by defendant Nos.1 to 4 in favour of defendant No.6 is neither legal, nor valid and not binding on the plaintiff. The plaintiff further sought a declaration that the sale deed dated 30.12.2006 executed between defendant No.6 and defendant No.7 in respect of the suit land is neither legal nor valid and is not binding on the plaintiff. Mandatory injunction was also sought to remove the structure on the suit land. The said application was opposed by the defendants and the petitioners. In the said suit, an application was moved by the power of attorney holder of the plaintiff that he be substituted in

place of the plaintiff and the said application was rejected on 30.12.2013 by the learned Joint Civil Judge, Senior Division, Pune.

4. For the sake of brevity, the parties are hereinafter referred to by their original status in the suit as plaintiff and defendants.

5. Mr.Soni, the learned Counsel appearing for the petitioners/defendant No.6, has submitted that the application is filed under Order I Rule 10 of the Civil Procedure Code. Wherein the plaintiffs' power of attorney holder is to be substituted in his place. He pointed out that the power of attorney holder has purchased the suit lands in the Writ Petition No.8018 on 15.3.2010 from the plaintiffs and the sale deeds and the power of attorney which are under challenge, are of 1.9.2003 between defendant Nos.1 to 4 and defendant No.6 and of 30.12.2006 between defendant Nos.6 and 7. Thus, the power of attorney was not in picture at all when the documents under challenge took place. Moreover, the suit was filed on 21.7.2012 and on that day, the plaintiffs had no right title interest in the suit land as they had sold the said suit land on 15.3.2010 in favour of power of attorney holder. Thus, the frame of the suit is completely defective and the suit suffers from misjoinder of parties. The power of attorney

holder cannot be substituted in the place of the plaintiffs due to the date of the cause of action. The cause of action did accrue *qua* the plaintiffs as they were not the owners of the suit property.

6. After hearing submissions of both the parties, it is apparent that on the date of filing of the Suits, the plaintiffs in both the Suits were not the owners, but they have lost the title and ownership in the month of March 2010, as they have also executed the registered sale deed in favour of the Power of Attorney Holders i.e., the petitioners. Thus, the plaintiffs are not the correct persons to prosecute this matter as the plaintiffs had no title and interest in the suit properties at the time of filing of the Suits. In the Suit, two agreements i.e. Power of Attorney and the Development Agreement executed on 01.09.2003 between defendant No.4 and defendant No.6 are challenged so also the registered sale deed which was executed on 30.12.2006 between defendant No.6 and defendant No.7 is challenged. It is true that the plaintiffs in both the Suits at the relevant time i.e., in the years 2003 and 2006 had not transferred their ownership and title in favour of the Power of Attorney holder, but it was transferred in the year 2010. In fact, as on today, the plaintiffs at the relevant time in the years 2003 and 2006 may be holding the original title and as a person so far as Power of Attorney holder of the plaintiffs is concerned was holding a title. However, from other sets of facts, the plaintiffs have lost the title in the year 2010. The

property was transferred and re-transferred in the year 2003 and further in the year 2006 to defendant Nos. 1 to 7. As on today, the Power of Attorney Holder of the plaintiffs, who is the proposed plaintiff, wants to prosecute this litigation due to the execution of registered sale deed in the month of March 2010. The right to sue accrues in favour of the proposed plaintiff. However, the order passed in one Suit, the Court has allowed the application under Order 1 Rule 10 of the Code of Civil Procedure and in other Suit, the application under Order 1 Rule 10 is rejected. The cause of action is shown on the date when the original plaintiffs had knowledge in respect of the execution of the sale deed of 2006 i.e. in the year 2009. Whether the proposed plaintiff has knowledge on the same date and yet he purchased the property or he did not have knowledge as the fact of transfer and re-transfer was suppressed by the plaintiff is an another issue. It is also to be noted that the proposed plaintiff has no right and interest in the suit property prior to March 2010 as the registered sale deed was executed in his favour in March 2010. Thus the case of the proposed plaintiff is stands different footing than the original plaintiff considering the entire transactions as whole so also the date of right to sue accrues and the date of filing of the Suits. It appears from the submissions made by the learned counsel for the proposed plaintiff that both the Suits have singed by the Power of Attorney Holder of the proposed plaintiff. Thus, it appears that

the proposed plaintiff bonafide wanted to prosecute the defendants. However, because of complexity of the transaction earlier owner i.e. the plaintiff subsequent transferees, I am of the view that the application under Order 1 Rule 10 of C.P.C. is not to be allowed.

7. The learned counsel for the proposed plaintiff has submitted that he wants to withdraw both the Suits with liberty to file fresh Suit. He apprehends that there would be an issue of limitation and, therefore, the application under Order 1 Rule 10 of C.P.C. was filed. He may give fresh notice under Section 164 of the Maharashtra Co-operative Societies Act. The issue of limitation is open, if fresh Suits are filed. The proposed plaintiff can very well rely on filing of the present Suit to meet the point of limitation and the issue of limitation is to be decided and argued on merits.

8. In view of the above, Writ Petition No. 8018 of 2014 is allowed in terms of prayer clause (a) and Writ Petition No. 5462 of 2014 is dismissed.

(MRIDULA BHATKAR, J.)