

Mr. Rajesh N. Kachare i/b. Mr. Ameet A. Palkar for Petitioners.
Mr. A. S. Rao for Respondents No.1 to 4.
Mr. Anilkumar Patil for Respondent No.5.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 14.06.2016 passed by the learned Civil Judge, Junior Division, Wada below exhibit-97 in Regular Civil Suit No.55 of 2013. By that order, the learned trial Judge allowed the application filed by the respondent No.5, hereinafter referred to as 'applicant', under Order I, Rule 10 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and directed the plaintiffs to add applicant in the Suit as defendant No.5 by amending the plaint and furnishing the copy of the amended plaint on her.

3. Plaintiffs have instituted Suit inter alia for declaration that the agreement dated 28.04.1983 and the deed of declaration dated 04.03.1997 are void, bad in law and the same be declared as cancelled;

for declaration that plaintiffs are the owners of the suit property and for possession as also for perpetual injunction.

2. Mr. Kachare submitted that Dattu Narayan Gotarne was the owner of the suit property. One of the sons of Dattu by name Ramu executed sale deed on 16.12.1976 in favour of Namdev Nashik Patil. Namdev Nashik Patil in turn executed sale deed on 23.06.1978 in favour of Himmatlal Kantilal. By alleged agreement dated 28.04.2013, respondents No.1 to 4, hereinafter referred to 'defendants No.1 to 4', agreed to purchase the suit property from the plaintiffs herein. The said agreement was not a registered instrument and on 04.03.1997, deed of declaration is executed. Applicant herein claims to be daughter of Dattu Narayan Gotarne. He submitted that having regard to the controversy raised in the Suit filed by the plaintiffs, applicant is neither a necessary nor a proper party. She has already instituted Regular Suit No.31 of 2012 in the Court of Civil Judge, Junior Division against legal representatives of Dattu Narayan Gotarne as also Namdev Nashik Patil, Himmatlal Kantilal, plaintiff No.1 and defendants No.1 to 4 for declaration that the sale deed executed by Namdev Nashik Patil and Ramu Dattu Gotarne is illegal and not binding on plaintiffs and defendants No.1 to 7; for declaration that the sale deed executed by Namdev Nashik Patil in favour of Himmatlal and plaintiff No.1 Nalini be cancelled as also for declaration that the declaration dated 04.03.1997 executed by and between Himmatlal, plaintiff No.1 - Nalini, defendant No.1-Brahma Jeet and Induram Bhatia is illegal and not binding on her. She has prayed for declaration that the agreement dated 28.04.1983 is not binding on her. He submitted that the interest of the applicant is sufficiently protected in the Suit instituted by her. Her presence is absolutely not necessary for deciding the controversy raised in the present Suit. He further submitted that the learned trial Judge observed

in paragraph 10 that plaintiffs did not deny relationship of the applicant with the deceased Dattu Narayn Gotarne in their say at exhibit-121. He submitted that the said finding is contrary to paragraph 2 of the say filed by the plaintiffs. He, therefore, submitted that the impugned order deserves to be set aside.

3. Mr. Rao supported the submissions advanced by Mr. Kachare. He submitted that defendants No.1 to 4 have filed reply opposing the application filed by the applicant. In particular, in paragraph 5 of the reply, defendants No.1 to 4 have denied the contentions raised in paragraph 2 of the application. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Patil supported the impugned order. He invited my attention to paragraphs 6 and 7 of the plaint. In paragraph 6, plaintiffs averred that they received notice dated 13.10.2010 from the office of the Talathi, Saja Kone in respect of land bearing Survey No.63, Hissa No.3 on 18.10.2010. Plaintiffs were called upon to remain present on 20.10.2010 along with all the documents. In paragraph 7, plaintiffs averred that they attended the office of Talathi and came to know that Smt. Kusum Patil (applicant) is claiming some rights in Survey No.63, Hissa No.3. He further submitted that applicants have instituted Suit being Regular Civil Suit No.31 of 2012 against plaintiff No.1 herein, who is defendant No.20, on or about 20.03.2012. The present Suit is instituted on or about 23.04.2013. Even before instituting the Suit, plaintiffs were aware that applicant herein is claiming right in Survey No.63, Hissa No.3. He has also invited my attention to paragraph 8 of the impugned order wherein the learned trial Judge has referred to mutation entry No.343. That mutation entry was made in view of the demise of Dattu Narayan Gotarne. On account of his death, names of

his legal representatives were mutated in the Record of Rights and the mutation entry No.347 was certified on 13.02.1977. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, in paragraph 7 of the plaint, plaintiffs have specifically referred to the applicant herein claiming rights in Hissa No.63/1. That apart, mutation entry No.343 was made after demise of Dattu Narayan Gotarne. The said mutation entry was certified on 13.02.1977 and legal representatives of Dattu Narayan Gotarne namely four sons and five daughters which includes applicant herein were recorded. That apart, applicant herein has instituted Suit against the plaintiff No.1 and others in respect of the property which are also subject matter of the present Suit. For the reasons recorded in paragraphs 8 and 10 of the impugned order, no fault can be found with the impugned order. Mr. Kachare submitted that plaintiffs have denied averments made in paragraph 2 of the application exhibit-97. Paragraph 2 of the reply filed by the plaintiffs at exhibit-121 reads thus,

“2. Plaintiff state that applicant stated in paragraph No.2 is Shri.Dattu Gotarne was the original owner of said land Shri Dattu Gotarned has Demise on 16/12/1976 and after the death of Shri.Dattu Gotarne the names of Applicant and other Coparceners were entered in revenue record by way of mutation entry. The Applicants are legal heirs of Shri.Dattu Narayan Gotarne and the all Coparceners is in possession of suit property i.e. land bearing Gat No.73/1/1 area 1-40-0 situated at village Gates, Tal-Wada, Dist Palghar is false and fabricated.”

6. Perusal of this reply shows that plaintiffs have denied that applicant is legal heir of Dattu Narayan Gotarne and that all the coparceners are in possession of the property. Perusal of the application filed by the applicant and in particular paragraph 8 thereof shows that

applicant claims to be in possession of Gat No.73/1/1. In this view of the matter, it cannot be said that the learned trial Judge committed error in allowing the application. The learned trial Judge has held that applicant is a necessary party and in her absence, Court will not be in a position to pass effective decree. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Liberty is reserved to the parties for applying before the trial Court for clubbing the Suits together. If such application is made, the learned trial Judge will pass appropriate order.

(R. G. KETKAR, J.)

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