

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8741 OF 2015

Shri Deviprasad Ramavadh Dubey	...Petitioner
<i>Versus</i>	
M/s. Tharwani Infrastructure	
Through Shri.mohan Tharwani	
And Ors	...Respondents
....	
Mr.S.A. Ahmed, Advocate for the Petitioner.	
Mr. D.S. Patil, Advocate for the Respondent No.1.	
....	

CORAM : R. G. KETKAR, J.

DATE : 15th FEBRUARY, 2017

P.C.

1. Heard Mr.S.A. Ahmed, learned Counsel for the petitioner and Mr.D.S. Patil, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'applicant' has challenged the judgment and order dated 22.6.2015 passed by the learned 2nd Jt. Civil Judge, Senior Division, Kalyan below Exhibit-37 in Special Civil Suit No.487/2011. By that order, the learned trial Judge rejected the application made by the applicant under Order I Rule 10 of C.P.C. for impleading him as a party defendant.

3. Respondent No.1, hereinafter referred to as the 'plaintiff' has instituted suit against respondents No.2 to 9, hereinafter referred to as the 'defendants', for specific performance of the contract dated 6.12.2010. On 19.7.2011 the defendants executed development agreement in favour of the applicant. Clause-2 of the agreement recited that the defendants have handed over possession to the applicant. On 29.7.2011 confirmation deed was executed between the defendants and the applicant. Clause-2 thereof recited that the defendants have handed over possession to the applicant.

4. The applicant, therefore, filed application inter alia contending that on the basis of the Development Agreement dated 19.7.2011 and subsequent Deed of Confirmation dated 29.7.2011, he is in possession of the suit property. The applicant had invested lakhs of rupees for the development of the suit property and in case he is not impleaded as the defendant, irreparable loss will be caused to him.

5. By the impugned order, the learned trial Judge has rejected the application on the ground that the applicant is a stranger or third party to the contract between the plaintiff and

the defendants. He is neither a necessary nor a proper party to the suit. The applicant is at liberty to adopt appropriate proceedings for vindicating his right. It is against this order, the applicant has instituted present Petition.

6. In support of this Petition, Mr. Ahmed submitted that the applicant is in possession of the suit property. He is a bonafide purchaser for value without notice. He relied upon Section 19(b) of the Specific Relief Act, 1963 (for short, 'Act'). He submitted that as the applicant is in possession of the suit property, he has interest therein. It is, therefore, absolutely necessary to implead the applicant as a party defendant.

7. On the other hand Mr. Patil supported the impugned order.

8. 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, the applicant is claiming possession on the basis of the Development Agreement dated 19.7.2011 and Confirmation Deed dated 29.7.2011. It is not in dispute and is a matter of record that neither the Development Agreement dated 19.7.2011 nor the Confirmation

Deed dated 29.7.2011 is a registered instrument. The Development Agreement is executed on Rs.100 non-judicial stamp paper. Even the Confirmation Deed is executed on Rs.100 non-judicial stamp paper. *Prima facie* on the basis of these documents, the applicant can not claim any right, title and interest in the suit property.

9. In the case of ***Kasturi v. Iyyamperumal and others***, ***AIR 2005 SC 2813***, Apex Court has observed that in a suit for specific performance of contract for sale the necessary parties are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In the present case, *prima facie* the applicant cannot claim any interest in the suit property.

10. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)