

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1354 OF 2018

SHOBHA RANGNATH CHINDHE @ SHOBHA BHAGWANT BAKAL
VERSUS
SHANKAR AMBADAS MORE AND OTHERS

...
Advocate for the Petitioner : Shri Karpe Rahul R..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th March, 2018

Per Court:

1 The Petitioner is aggrieved by the impugned order dated 04.11.2017 below Exhibit 19 in Special Civil Suit No.87/2017 by which, the Trial Court has permitted admission of parties.

2 On 06.02.2018, when this matter was heard for sometime, I have made certain observations in paragraphs 2 and 3 of my order, which read as under:-

- "2. Issue is as regards the suit property in S.C.S. No. 87/2017, which is claimed to be a self-acquired property by the petitioner/original defendant. The original plaintiff is also under the belief that this petitioner is an exclusive owner of the suit property. However, the step son of this petitioner has initiated Regular Civil Suit No. 310/2014, seeking partition and separate possession of the joint family's properties, involving the same property.
3. In the event the Special Civil Suit is decreed in favour of the plaintiff, by which, the petitioner/defendant

would hand over the suit property Gut No. 417/1, it is likely to run counter to the result in R.C.S. No. 310/2014, in which, the same property is said to be placed in the common hotch-pot for partition as the other members of the joint family seem to claim a share in the same property."

3 The learned Advocate for the Petitioner (Shobha), who had sought time to take instructions as to whether, the property in Special Civil Suit No.87/2017 is also a part of the suit property in RCS No.310/2014, submits, on instructions, that the suit property in Special Civil Suit No.87/2017 is also in the common hotchpotch in RCS No.310/2014, in which, the parties are litigating for partition and separate possession.

4 Shri Karpe, learned Advocate for the Petitioner (Shobha), who was the sole Defendant in Special Civil Suit No.87/2017, has placed reliance upon the judgment of the Honourable Supreme Court (three Judges Bench) in the matter of Kasturi vs. Iyyamperumal and others, AIR. 2005 SC 2813 and my attention is specifically drawn to the observations of the Honourable Supreme Court while dealing with the suit for specific performance of contract wherein, the third parties seek addition as Defendants, as under :-

"14. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the

contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of *Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors.* reported in 1996(10) SCC 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the respondent Nos.2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos.1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being the respondent Nos.1 and 4 to

11 have to be sued for taking possession if they are in possession of the decretal property."

5 Shri Karpe, therefore, strenuously contended that whatever may be the rights of the third parties, they cannot be added as Defendants in the suit seeking specific performance of contract between the parties to the contract.

6 I have no hesitation in accepting this contention since that is the law, which has been crystallized by the Honourable Supreme Court and the issue is no longer debatable that a third party, unconnected with the contract, cannot be permitted to become the defendant in a suit for specific performance.

7 However, the issue before this Court is that Sudhakar, the stepson of the Petitioner (Shobha), who is the original Defendant in the suit for specific performance, comes forward to say that his stepmother Shobha (Petitioner herein) has surreptitiously sold the share of his self acquired property. I am not going into the aspect as to whether, the property sold by the Petitioner belongs to her stepson (Sudhakar) or would be a part of the ancestral property which has been put in the common hotchpotch in RCS No.310/2014, which is filed by the stepson.

8 The fact situation before this Court, therefore, is that the stepson (Sudhakar) has initiated the suit for partition and separate possession stating that the property, which is sought to be partitioned, be

placed in the common hotchpotch. The suit for specific performance of contract being Special Civil Suit No.87/2017 filed by Shankar Ambadas More and Sudam Eknath Bankar (Respondent Nos.1 and 2 herein) against the Petitioner (Shobha Chindhe) includes the same property Gat No.417/1 which is put up for partition in the suit for partition and separate possession. The Petitioner herein, Shobha, has filed a purshis before the Trial Court consenting for allowing the suit for specific performance. Obviously, this shows that it is a collusive suit.

9 The above facts were not in the Kasturi case (supra) before the Honourable Supreme Court. As such, the position with regard to the identical property before this Court is that on the one hand, the Petitioner has filed the purshis in the suit for specific performance agreeing to handover the property to the Plaintiffs (Shankar More and Sudam Bankar), who claim to have purchased it from the Petitioner. On the other hand, the stepson of the Petitioner has put the same property for partition and separate possession in the common hotchpotch in RCS No.310/2014.

10 Consequentially, the situation would be that if the Petitioner (Shobha) is permitted to handover the said property to the Plaintiffs in the suit for specific performance and if subsequently, the Trial Court decrees RCS No.310/2014 concluding that the same property will go to some other litigating sides as a share on partition of the ancestral property, it would create an unusual situation before the Executing Court as both the

decrees are likely to be put for execution. This will not only complicate the issue, but would also create a dichotomy in case the property, in respect of which the suit for specific performance is filed by the Plaintiffs, later on turns out to be illegally sold by Shobha to Shankar and Sudam and the same property comes to the share of some other litigating party in the pending suit for partition and separate possession. This situation was not before the Honourable Supreme Court in the *Kasturi case (supra)*.

11 As such, the contention of the Petitioner (Shobha) that the Plaintiffs (Shankar and Sudam) may take the property in the suit for specific performance and if eventually the same property is decreed in favour of some other litigating side in the suit for partition and separate possession, those owners of the property may find the remedy for recovering the said property from Shankar and Sudam, is fallacious. It, therefore, means that the Petitioner had surreptitiously sold this property to the Plaintiffs.

12 I am of the view that the said submissions cannot be accepted as it would create a chaos in the fact situation of this case. In fact, the Petitioner herein (Shobha) or Respondent Nos.1 and 2/ Plaintiffs in the suit for specific performance could have moved for clubbing of the matters in order to avoid further complications and multiplicity of litigation.

13 In that view of the matter, I do not find that the impugned order of the Trial Court permitting the stepson (Sudhakar) and his family

members to participate as Defendants in the suit for specific performance, could be termed as being perverse or erroneous.

14 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

15 Nevertheless, if the Petitioner or Respondent Nos.1 and 2/ Plaintiffs desire to move the appropriate Court for clubbing of the matters so as to avoid complications and contradictory decrees of two Courts, one in the suit for specific performance and one in the suit for partition and separate possession of the same property, the concerned Court may consider the said request on its own merits.

16 At this stage, the learned Advocate for the Petitioner prays that the order of this Court may be stayed for a period of four weeks as the Petitioner desires to approach the Honourable Supreme Court. The said request is accepted. This order is stayed for a period of FOUR WEEKS and hence, Special Civil Suit No.87/2017 shall also stand stayed.