

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11256 OF 2018

SUBHASH TULSHIRAM SURYAWANSHI
VERSUS
SHANKARRAO BHIMRAO SURYAWANSHI THROUGH LRS

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Advocate for Petitioner : Shri Chapalgaonkar S.G.
Advocate for Respondent 3 : Shri Patil N.P. Jamalpurkar
h/f Shri Patil L.C.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 16, 2018
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PER COURT :-

1 The petitioner, who is the third party applicant before the trial Court, is aggrieved by the order dated 30.8.2018, by which, his application Exhibit 159 seeking leave to be implemented as the co-plaintiff in RCS No.35 of 2005, has been rejected.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides on 10.10.2018, 11.10.2018 and today. I have gone through the ten grounds formulated by the petitioner in the memo of the petition and I have considered the judgments cited.

3 A house property bearing Municipal No. 46 in Ward No.15 situated at Omarga, is the subject matter of RCS No.35 of 2005 (Old No.

199 of 1996). Hemant Tulshiram Suryawanshi is the plaintiff. The petitioner / third party applicant is Subhash Tulshiram Suryawanshi, real brother of the plaintiff. The suit is filed for seeking specific performance of contract based on an agreement to sell dated 27.2.1989.

4 Hemant and Subhash, who are sons of Tulshiram, are the grand sons of Bhimrao. The suit property was agreed to be sold by Shankarrao Bhimrao Suryawanshi to Tulshiram Bhimrao Suryawanshi. For the sake of convenience, Tulshiram requested Shankarrao to execute a sale deed in favour of his son Hemant. The consideration of the said sale was paid by Tulshiram to Shankarrao.

5 The suit property is said to have remained in possession of Tulshiram. Hemant acquired employment and started residing in Mumbai whereas, this petitioner / Subhash resided in the suit property along with his father Tulshiram. As Shankarrao deferred the execution of the sale deed, RCS (Old) No.199 of 1996 was instituted seeking performance of the contract. As Hemant was away, the General Power of Attorney was granted by Hemant to his brother Subhash, who preferred the suit. Now Subhash has authoritatively learnt that Hemant has decided to settle the dispute with the defendants, who are the L.Rs. of his real uncle Shankarrao. Grievance of Subhash is that he developed the property, he erected the construction at his own costs, his earnings

were invested as he was residing in the property and Hemant now desires to usurp the property by entering into a compromise with the defendants.

6 Learned counsel for the petitioner further submits that if the suit is compromised, Hemant would take the property and may dispose it off, thereby leaving Subhash in the lurch. He submits that the only option in this situation is to seek addition / impleadment as a co-plaintiff in the said suit so as to prosecute his rights in law.

7 Learned counsel for the original plaintiff / Hemant submits that Subhash has no *locus standi* to be impleaded as a plaintiff. His General Power of Attorney has been cancelled by Hemant and he himself is prosecuting the suit. The involvement of Subhash in the said proceedings before the trial Court was restricted only to the extent of representing Hemant as long as Hemant desired to permit him to do so on the basis of the GPA. Once Hemant has cancelled the GPA and has himself started prosecuting the suit, Subhash will have no *locus standi*.

8 It is further submitted that there is not a single sentence by way of pleadings in the plaint, so as to indicate that Subhash had contributed to purchasing the property or that Subhash had developed the property or that Subhash had invested his earnings in raising the

structure in the suit property. If Subhash had any share indirectly in the property, by causing investment or spending his earnings for the development of the property, such a pleading would have been found in the plaint. If he has independent rights, he will have to avail of a remedy as would be permissible in law.

9 Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Kasturi Vs. Iyyamperumal and others [2005(3) Mh.L.J. 1]. Contention is that the Honourable Apex Court (Three Judges Bench) has dealt with the issue as to who is a necessary party and who can be said to be a person, who can seek specific performance of the contract for sale. Reliance is also placed on the judgment delivered by this Court in the matter of Mulchand K. Ranka Vs. Hitesh C. Jhaveri [2012 (4) Mah. L.J. 312].

10 I find from the record available and pleadings of the parties that Subhash intends to assert his right to the suit property. If he had any such right, prima facie, which was enforceable against the defendants, he would have joined Hemant as a plaintiff. He chose to be a GPA holder. The plaint does not reveal any such pleadings, which would prima facie, indicate that Subhash is having an equal share in the suit property along with Hemant.

11 In Kasturi (supra), the Honourable Apex Court has dealt with a somewhat similar issue and the conclusions are found in paragraph Nos.7 to 9 and 12 of the judgment, which read as under:-

“7. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

8. *We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.*

9. *That apart, from a plain reading of section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.*

.....

12. *From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. ”*

12 I find it quite difficult, *prima facie*, to conceive as to whether Subhash can be said to have some rights in the suit property. In the absence of pleadings, it would be in-appropriate to presume that he could be impleaded as a co-plaintiff, which, in the given set of facts might amount to obstructing the plaintiff himself in prosecuting the suit. One cannot be oblivious of the fact that if Subhash is permitted to be impleaded as a plaintiff, his claim will be diagonally opposite / in opposition to the claim of Hemant and a weird situation would be created as Subhash would then seek an amendment to the plaint for raising grounds in support of his claim as have been set out for the first time in his application Exhibit 159. It is difficult to comprehend two plaintiffs opposing each other by putting forth such pleadings which would be aimed at destroying the claim of other claimant.

13 In the above back drop, I do not find that the trial Court would be precluded or handicapped from deciding the suit in the absence of Subhash.

14 In view of the above, the impugned order rejecting application Exhibit 159 cannot be branded as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Needless to state, in the event Subhash desires to take recourse to a remedy as may

be permissible in law, the dismissal of this petition would not be an impediment.

(RAVINDRA V. GHUGE, J.)

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