

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

WRIT PETITION NO. 2207 OF 2017

Shri Maruti Mahadu Veer .. Petitioner
Vs.
Shri Banwarilal Durgasingh Tanvar & Ors. .. Respondents

...

Mr. Vilas B. Tapkir for the Petitioner.
None for the Respondents.

***CORAM : V.L.ACHLIYA, J.
DATE : 15th FEBRUARY, 2018.***

P.C. :

1. Being aggrieved by the order dated 23rd November, 2016 passed by the 9th Civil Judge (Senior Division), Pune in Special Civil Suit No.478/2009, the petitioner – original defendant has preferred this Writ Petition under Article 227 of the Constitution of India. By the impugned order, the Trial Court has allowed the application moved under Order I Rule 10 and Order VI Rule 17 of the Code of Civil Procedure (Exh. 217) filed by the respondent- original plaintiffs.

2. The petitioner has assailed the impugned order with contention that the Trial Court has erred in allowing the application at belated stage. It is the contention of the petitioner that the parties allowed to be joined as defendants neither necessary or proper parties to the suit. Petitioner-defendants are no way concerned with the sale transaction in respect of the suit property entered between the proposed defendants. It is

contended that the plaintiff can file a separate suit seeking appropriate relief against those parties. The order passed by the Trial Court has changed the complexion of the suit.

3. On due consideration of submissions advanced, in the light of impugned order passed by the Trial court, I am of the view that no case is made out to invoke the jurisdiction under Article 227 of the Constitution of India. It is quite settled position in law that in exercise of supervisory jurisdiction conferred under Article 227 of the Constitution of India, the High court is expected to exercise its jurisdiction in limited sphere to see whether the subordinate court or tribunal has acted within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court or a Tribunal Court and it is not open to it to review or re-assess the evidence upon which the inferior court or tribunal has passed the order which is challenged by way of petition filed under Article 227 of the Constitution of India.

4. In the instant case, the Trial Court has allowed the application filed by the plaintiff seeking addition of party and consequential amendment which trial court felt necessary to decide between the parties. The plaintiff has filed suit for specific performance against the defendants – petitioners. In the affidavit by way of examination-in-chief filed by the petitioner - defendant No.1 it is disclosed that the suit property to the extent of 2 hector was sold to Shri Rahul S. Bahirat and others vide registered sale-deed executed in the year 2013. He has also filed documents to

that effect. Disclosure of said informant on the part of the petitioner - defendant No.1, leads to filing of application under Order I Rule 10 and Order VI Rule 17 of Code of Civil Procedure by the plaintiff to join the persons who sold the suit property as well as the persons who purchased the property during the pendency of suit and such consequential relief to declare said transaction between them as null and void and in-operative. While allowing the application, the Trial Court has considered the objections raised by the petitioner-defendants. On due consideration of rival contentions the Trial Court has passed the reasoned order. The Trial Court has observed that to avoid the multiplicity of proceeding, it is necessary to allow the application moved by the plaintiff. Thus, the order passed is reasoned and well within the scope of exercise of powers vested with the Trial Court. In this view, there is absolutely no perversity in the order passed nor there is jurisdictional error which needs to be rectified in exercise of supervisory jurisdiction under Article 227 of Constitution of India. I am therefore not inclined to entertain the petition. Accordingly, the petition is dismissed with no order as to costs.

(V. L. ACHLIYA, J.)