

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4177 OF 2018

Smt. Sushila Chandranath Sharma & Ors. ... Petitioners
Vs.
Pundalik Krishna Patil & Ors. ... Respondents

Mr. Rohan R. Pawaskar, Advocate for the petitioners.
Mr. Yogesh Keny, Advocate for respondent nos. 1 to 5.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 12th July, 2018.

P.C.:

Rule. Rule made returnable forthwith. By consent, the
Petition is heard finally and decided at the stage of admission.

2. By this Petition, the order dated 17th June, 2017 below Exhibit
101 in Regular Civil Suit No. 72 of 2012 passed by the learned Civil
Judge, Junior Division, Wada thereby rejecting the Application filed
by the petitioners/applicants under Rule 10 Order 1 of Code of Civil
Procedure for for impleading them as party-defendants in the said
suit, is challenged. The respondent nos. 1 to 5 have filed the suit for
partition against respondent no. 6, i.e., step-sister for partition. In the
said suit, the petitioners, who are the purchaser of plot of land
bearing Survey No. 203, have moved an Application that they are to
be impleaded as party-defendants.

3. The learned counsel for the petitioners submitted that in the year 1996, Gangubai, mother of defendant no. 1 has agreed to sell part of the suit property, i.e., Survey No. 203 to the present petitioners. The petitioners have paid the entire consideration amount to Gangubai and therefore, this being the suit for partition, they become the necessary and proper parties and they are to be impleaded in the suit. The learned counsel submitted that the learned Judge of the trial Court has not taken this fact into account and has erroneously rejected the said Application.

4. The learned counsel for the respondents/plaintiffs, while defending the impugned order, has submitted that Gangubai though has entered into an Agreement of Sale with the petitioners/applicants in 1996, as full amount was not paid, Gangubai subsequently sold the land bearing Survey no. 203 to respondent nos. 7, 8 and 9/defendant nos. 2 to 4 in 2009. The learned counsel submitted that those purchasers are made party-defendants in the present suit, as their names are mutated in the record of right.

5. Heard the submissions. Perused the plaint, impugned order and so also the agreement executed by Gangubai. The land bearing Survey no. 203 is a part of suit property. Gangubai though had

executed Agreement of Sale with the present petitioners, no conveyance was executed in their favour and subsequently the property was sold fully to other party in the year 2009 and therefore, that party is made defendants rightly in the suit for partition. I am informed that the present petitioners have filed independent Suit bearing no. 2156 of 2012 against the legal heirs of deceased Gangubai for specific performance and there they have also prayed for cancellation of the subsequent sale deed, which was executed by Gangubai with present respondent nos. 7, 8 and 9.

6. In view of the transaction which have taken place between the parties and deceased Gangubai and the reliefs claimed by the present respondents, I am of the view that the trial Court has taken a correct view that the petitioners are not the necessary and proper party for adjudication of the issue of partition and declaration in respect of suit property. The petitioners have rightly filed a separate suit for specific performance. No interference is required in the order dated 17th June, 2017 passed by the trial Court in Regular Civil Suit No. 72 of 2012. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)