

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 406 OF 2017
WITH
CIVIL APPLICATION NO. 796 OF 2017
IN
SECOND APPEAL NO. 406 OF 2017

Shri Shrirang Maruti Jagtap .. Appellant
vs.
Shri Vijay Shivaji Chandgude & Anr. .. Respondents

WITH
CIVIL APPLICATION NO. 814 OF 2017
IN
SECOND APPEAL NO. 406 OF 2017

Shri Shrirang Maruti Jagtap .. Appellant
vs.
Shri Vijay Shivaji Chandgude & Anr. .. Respondents
And
M/s. Chandgude and Jagtap Hotel
Pvt. Ltd. .. Proposed
Respondent No. 3
Mr. G. N. Salunke for Appellant.
Ms Aruna H. Ghadge for Respondent No. 1.
Mr. C. B. Kher for Respondent No. 2 - MSFC.

CORAM : M. S. SONAK, J.
DATE: 20 FEBRUARY 2018

P.C :

1] Mr. Salunke learned counsel for the appellant submits that the appellant has taken out civil application no 814 of 2017 seeking to implead M/s. Chandgude and Jagtap Hotel Pvt. Ltd. as respondent no. 3 to this appeal. He points out that this civil application has been taken out because the trial court and the first appeal court have non suited the appellant – plaintiff for non joinder of this company as a party to the proceedings. He relies upon ***Pandurang Sitaram Pande (Deceased through L.Rs.) Org.***

Plaintiff Vinaykumar Pandurang Pande vs. Avinash Ramkrishna Pande¹, to submit that powers to implead parties under Order I Rule 10(2) of CPC can be exercised at any stage. He points out that an appeal is nothing but a continuation of the suit and therefore there is no bar to the exercise of such powers, as has been held by the learned Single Judge of this Court in the case of *Pandurang Sitaram Pande* (supra). Mr. Salunke submits that there is a clear fraud not only in the execution of the sale deed dated 14th July 1994 which was sought to be cancelled by instituting the suit bearing Special Suit No. 673 of 2001 and from which, the present second appeal arises but further, here was a fraud in a very incorporation of the company which is now sought to be impleaded as a respondent in this appeal. In this circumstances, Mr. Salunke submits that it is only appropriate that leave to implead the company as a party in this proceedings be granted so as to avoid any multiplicity of proceedings.

2] Mr. Salunke submits that the substantial question of law involved in this appeal is whether, the appellant – plaintiff, could have been non suited on the ground of non joinder of necessary party, in the absence of any issue to that effect being framed by the civil court. Mr. Salunke submits that now that two courts have held that the company was a necessary party, it is only appropriate that the civil application is allowed, the company is impleaded as a party respondent and the matter is either remanded to the trial court or decided on the basis of the evidence available on record.

3] Ms Ghadge and Mr. Kher, learned counsel for the respondents point out that since the appellant, does not even dispute that the company was a necessary party, the trial court and

1 2016 6 ALL MR 273

the appeal court were quite justified in non suiting the appellant – plaintiff on the ground of non joinder of necessary parties. They point out that the sale deed dated 14th July 1994 which is sought to be cancelled by institution of the suit, transfers the suit property to the company. In such circumstances, there can be no doubt that the company was a necessary party and no suit was at all maintainable in the absence of a company. They point out that there is absolutely no substantial question of law involved in this appeal and unless, any such question is involved, this court, may not entertain the appeal. If the appeal is not entertain-able, then, there is no question of entertaining any civil application for joinder of parties in such an appeal. For these reasons, the learned counsel for the respondents submit that the appeal as well as the civil application may be dismissed.

4] In this case, although it is true that no issue as non joinder of necessary parties may have been specifically framed, it is apparent that such an issue arose and was addressed to by all the parties in the suit. The suit, is for cancellation of registered sale deed dated 14th July 1994. The appellant – plaintiff has executed or at least, has purported to have executed this sale deed to convey the suit property in favour of the company. Although, the appellant – plaintiff, may have his own case, at least, from the face of the document, the sale is in favour of the company. In such a situation, there can be no doubt that the company was a necessary party to such a suit. The trial court as well as the appeal court, have, non suited the appellant – plaintiff for non joinder of the necessary party i.e. the company.

5] In this appeal, there is no serious contention raised that the company was not at all a necessary party. In such a situation, it

cannot be said that any substantial question of law arises so as to warrant the entertainment of this appeal. In the absence of a substantial question of law arising or being involved in an appeal of this nature, there is no question of entertainment of such an appeal.

6] Although, it is true that powers under Order I Rule 10(2) of CPC can be exercised at any stage, there is no doubt that such powers are discretionary and the discretion is required to be exercised on the basis of well settled judicial parameters. In a matter of this nature, where necessary party is neither impleaded at the trial stage or at the first appellate stage some substantial reasons or cause will have to be indicated or made out by the party who seeks impleadment so as to warrant exercise of judicial discretion. No such reasons have been indicated and no such cause has been shown. Despite the nature of reliefs applied for in the suit, the company was never impleaded as a respondent. Even assuming that there were allegations of fraud not only in the execution of the sale deed but also the incorporation of the company itself, it is necessary to implead the company as a party because, such allegations, could not have been appropriately examined in the absence of the company being a party to such proceedings.

7] The decision of this Court in the case of *Pandurang Sitaram Pande* (supra) is distinguishable on facts. In the said decision, the court was concerned with a suit for partition and the issue was about devolution of shares and separate possession on the basis of such devolution of shares. The observations upon which Mr. Salunke placed reliance were made in the context of this position. The learned Single Judge has referred to the decision of the Honorable Supreme Court in the case of ***Kanakarathanammal vs.***

V. S. Loganatha Mudaliar & Anr.², in which, this court has noted that the Hon'ble Apex Court had held that the trial court itself dismissed the suit on the ground of non-joinder of necessary parties, and the appellant, applied for impleadment of such necessary party only before the Hon'ble Apex Court. In such circumstances, the Hon'ble Apex Court held that this was not a fit case for exercise of judicial discretion. The learned Single Judge has distinguished this decision of the Hon'ble Supreme Court by observing that the Hon'ble Apex Court, was not concerned with the suit for partition and separate possession. In the present case also, we are not concerned with the suit for partition and separate possession.

8] For the aforesaid reasons, this second appeal is dismissed since it involves no substantial question of law. The civil application for seeking impleadment is also dismissed without prejudice to the rights of the appellant to take such steps as are available under the law.

9] The appeal and the civil applications are therefore dismissed. However, there shall be no order as to costs.

(M. S. SONAK, J.)

Chandka

² AIR 1965 SC 271