

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.687 OF 2015

Siddhi Promoters,]
Through its Authorized Partner,]
Ashok Shantilal Jain,]
Age : about 52 years, Occ. Business,]
R/at Row House No.3, Kohinoor Estate]
Co-op. Housing Society, Mula Road,]
Khadki, Pune - 411 003.] Petitioner

Versus

1. Anita Krishnarao Shirolkar *alias*]
Janaki Vikas Morey,]
Age : 43 years, Occ. Housewife,]
R/at Flat No.9, Rachana Heritage,]
Survey No.106/6, Near Old Karnataka]
High School, Behind Income Tax Office]
Road, Pune - 411 004.]
2. Nandan Builders,]
A registered Partnership Firm,]
registered under the Indian Partnership]
Act, having its Office at 2/29,]
Government Quarters, Mukund Nagar,]
Pune - 411 037.]
Through its Partners :-]
 - 2a) Niranjana Padmakar Ray,]
Age about 48 years, Occ. Business,]
R/at : As above.]
 - 2b) Ashok Shantilal Jain,]
Age about 52 years, Occ. Business,]

- R/at Row House No.3, Kohinoor]
Estate Co-op. Hsg. Society,]
Mula Road, Khadki, Pune - 411 003.]
2c) Sham Chandrakant Nanaware,]
Age, Adult, Occ. Business,]
R/at 1064, Shukrawar Peth, Pune.]
3. Bal Sahityalaya Trust,]
A Trust, registered under the Bombay]
Public Trust Act, bearing its Registration]
No.838, having its Office at 1015,]
Sadashiv Peth, Pune - 411 030.]
Through its Managing Trustees :-]
3a) Ganesh Vasant Gokhale,]
Adult, Occ. Service,]
R/at Kunal Apartment, Panmale,]
Sinhagad Road, Pune - 411 030.]
3b) Secretary,]
For the Bal Sahityalaya Trust,]
No.5 and 6, through their Constituted]
Attorney - Niranjan Padmakar Ray,]
Adult, Occ. Business,]
R/at 2/29, Government Quarter,]
Mukund Nagar, Pune - 411 037.]
4. Uma Sadashiv Patayat,]
Age : Adult, Occ. Housewife,]
R/at 1205 / 1-9 Khuatbh, Pune - 411 004.]
5. Milind Madhav Padhye,]
Adult, Occ. Service,]
R/at C-406, Yogesh Road, Goregaon (E),]
Mumbai - 400 063.]
6. Arvind Madhav Padhye,]

Adult, Occ. Service,	]
R/at 7, Viswas, 1264/3, Shivaji Nagar,	]
Pune - 411 004.	]
7. Amarja Sudhir Athwale,	]
Adult, Occ. Housewife,	]
R/at A/4, Prakash Nagar,	]
Matunga (W), Mumbai - 411 016.	]
Through their Constituted Attorney	]
Niranjan Padmakar Ray	] Respondents

Dr. Birendra Saraf, a/w. Mr. Amol Kumaria and Ms. Shradha Achliya,
i/by M/s. ALMT Legal, for the Petitioner.

Mr. Madhav J. Jamdar for Respondent No.1.

Mr. Shailendra S. Kanetkar for Respondent Nos.2 and 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Dr. Saraf, learned counsel for the Petitioner, Mr. Jamdar, learned counsel for Respondent No.1, and Mr. Kanetkar, learned counsel for Respondent Nos.2 and 3.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 30th December 2013 passed by the Joint Civil Judge, Senior Division, Pune, below "Exhibit-159" in Special Civil Suit No.1421 of 2006.

3. The application at “Exhibit-159” was filed by the present Petitioner, under Order 1 Rule 10 of the Civil Procedure Code, 1908, for impleading the Applicant-Petitioner as a party-Defendant in the Suit, in view of the 'Assignment Deed' dated 14th October 2009, executed by Defendant Nos.3 and 4 in favour of the present Applicant-Petitioner.

4. The Trial Court, however, rejected the said application holding that, the Applicant is not either a necessary or proper party to the Suit. While doing so, the Trial Court has observed that, the Suit is filed by the legal heirs of one of the Partners of Partnership Firm for providing the 'Accounts' of the Partnership Firm and in such a Suit, even if the property of the Partnership Firm has changed the hands, it has got nothing to do with the claim of the Plaintiff. It was also held that, the impleadment of the present Applicant-Petitioner will unnecessarily widen the scope of the inquiry and hence, as already Defendant No.3, who is also one of the Partners of the Applicant-Firm, is there to protect the interest of the present Applicant-Petitioner, no case is made out for impleading the Applicant himself as party to the Suit.

5. While challenging this order of the Trial Court, the submission of learned counsel for the Petitioner is two fold; that, the Suit is not only for providing the 'Accounts of the Partnership Firm', but, also for the declaration as to the 'Development Agreement' dated 27th December

2002 and 'Power of Attorney' dated 27th December 2002, executed by Defendant No.2 in favour of Defendant Nos.3 and 4, as illegal, unlawful and not binding upon the Plaintiff. It is submitted that, now, Defendant Nos.3 and 4 have assigned their rights in favour of the present Applicant-Firm and, therefore, now Defendant Nos.3 and 4 may not contest the Suit seriously and in that case, the rights of the present Applicant-Firm will be seriously prejudiced and, therefore, joining of the present Applicant-Firm in the Suit is necessary. It is urged that, the Trial Court has not considered this important aspect and also the legal position, which is elucidated by the Hon'ble Apex Court in the case of *Amit Kumar Shaw and Anr. Vs. Farida Khatoon and Anr.*, (2005) 11 SCC 403, wherein, while considering the provisions of Order 22 Rule 10 of the C.P.C., the Apex Court has held that, “*even if it is not obligatory on the part of the Plaintiff to join the transferee pendente lite, but if such an alienee makes the application, the Court has discretion to implead the said alienee as a party to the Suit and the Court should exercise that discretion judicially and an alienee would ordinarily be joined as transferee pendente lite of an interest in immovable property, as he has acquired that right from his predecessor; hence, he is entitled to be heard in the matter on the merits of the case*”.

6. Per contra, learned counsel for the Respondents has submitted that, while exercising the discretion to decide whether the alienee

should be joined in the Suit as a party-Defendant, the Court has to consider the conduct of the party to the Suit. In this case, it is submitted that, Defendant No.3 has allowed the Suit to be proceeded ex-party. After the applications and several litigations, he was allowed to file the written statement. At that time, he has not disclosed about execution of this Agreement, assigning the Development Rights to the present Applicant-Petitioner. Moreover, Defendant No.3 himself is also the Partner of the Applicant-Firm. Hence, he is there to protect the interest of the Applicant and in such situation, joining of the present Applicant-Petitioner is absolutely not necessary; therefore, no interference is warranted in the impugned order passed by the Trial Court.

7. I have given my thoughtful consideration to the submissions advanced at bar by learned counsel for both the parties and also to the legal position, as set out by the Apex Court in the case of *Amit Kumar Shaw (Supra)*. In paragraph No.12 of the said Judgment, it was held as follows :-

“12. Under Order 22 Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie

satisfied for exercising its discretion in granting leave for continuing the suit.”

8. Whereas, in paragraph No.16 of the said Judgment, it was held as follows :-

“16. *The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party, if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10, an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter, which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”*

[Emphasis Supplied]

9. Thus, as per this legal position, at the stage of deciding the application for impleadment filed by the alienee, the Trial Court has only to be prima facie satisfied as to whether such alienation has really taken place and whether the presence of such alienee will help to protect the interest of the Defendants.

10. In paragraph No.16 of the Judgment, it can be seen that, the Apex Court has laid down in categorical term that, alienee, in such situation, is entitled to be impleaded in the Suit, where his predecessor-in-interest is made a party to the litigation and he is entitled to be heard in the matter on the merits of the case.

11. Here, in the present case, it may be true that, there is a delay in filing application on behalf of the Applicant-Firm; especially when Defendant No.3 is also the Partner of the said Firm, but, that cannot be a sole ground to reject the application, when the interest of the alienee pendente lite is also required to be protected and he needs to be heard in the matter, as held by the Apex Court. It is essential in the present case also on the ground that, Suit is not simplicitor for providing the 'Accounts of the Partnership Firm', but, it is also for the declaration that the 'Development Agreement' and 'Power of Attorney' dated 27th December 2002, executed by Defendant No.2 in favour of Defendant

Nos.3 and 4, are illegal, unlawful and not binding upon the Plaintiff. Now, if the Applicant is the alienee of the 'Development Rights' of Defendant Nos.3 and 4, then, it follows that, in order to protect its interest, the Applicant-Firm should be heard in the matter. Merely because Defendant No.3 is also the Partner of the Applicant-Firm, is not sufficient to deny that right of being heard in the matter, which is given by the Apex Court in the above-said case to the alienee, who is the present Applicant in this case.

12. In view thereof, in order to decide the dispute between the parties finally, effectually and completely, as the presence of the Applicant-Firm, who can be called as proper party, is essential to protect the interest of everyone in the *lis*, the impugned order passed by the Trial Court, rejecting application of the Applicant-Petitioner needs to be quashed and set aside.

13. Writ Petition is, accordingly, allowed. The impugned order passed by the Trial Court is set aside. The application at "Exhibit-159" is allowed. Respondents-Plaintiffs to carry out necessary amendment for bringing the name of the Applicant-Petitioner on record within a period of two weeks from the date of receipt of a copy of this order and thereafter, within a period of two weeks, the present Applicant-Petitioner to file written statement, if any.

14. Trial Court to decide the Special Civil Suit No.1421 of 2006 as expeditiously as possible.

15. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]