

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

WRIT PETITION NO.280 OF 2017

Mahadu Dhondu Jadhav and anr. ... Petitioners
Vs.
Jayendra Ramchandra Aayrekar and ors. ... Respondents

Mr.Rajesh Datar for the Petitioners.
Mr.B.K.Barve with Mr. Santosh Wagh i/by M/s B.K.Barve & Co.
for the Respondents.

**CORAM : M.S.SONAK, J.
DATE : APRIL 20, 2018.**

P.C. :

1. Heard Mr.Datar for the Petitioners. Mr. B.K. Barve for the Respondent No.1(original plaintiff in Regular Civil Suit No. 702 of 2013).
2. Mr. Datar, the learned counsel for the Petitioners seeks leave to delete Respondent Nos.2 to 6. Since according to him, presence of Respondent Nos.2 to 6 is not necessary for deciding the issue in the present petition, leave is granted. Amendment to be carried out forthwith.
3. Rule. Rule is made returnable forthwith, with the consent

and at the request of learned counsel for the parties.

4. The challenge in this petition is to the order dated 27th June 2016, made by the learned Trial Judge dismissing the Petitioners' application for impleadment as a party in Regular Civil Suit No. 702 of 2013.

5. Mr.Datar, the learned counsel for the Petitioners, submits that the Petitioners have already instituted Regular Civil Suit No. 392 of 2011 seeking for specific performance of an agreement dated 20th November 1974, executed by predecessor-in-title of Ananta Pandurang Gaikwad, the Respondent No.2 herein. He submits that in such a suit, the Respondent No.1, applied for impleadment and such impleadment came to be allowed by the learned Trial Judge by an order dated 14th October 2014.

6. Mr. Datar now submits that the present suit i.e. Regular Civil Suit No. 702 of 2013 is a suit in which the Respondent No.1 seeks specific performance of an agreement of sale dated 1st March 2011, executed by Ananta Pandurang Gaikwad. He therefore, submits that it is only appropriate that the Petitioners are permitted to be impleaded as a party in such a suit, so that all the issues which arise in both the suits can be effectively

adjudicated and disposed of.

7. Mr.Datar submits that the reasons which applied for the impleadment of the Respondent No.1 in Regular Civil Suit No. 392 of 2011 instituted by the Petitioners, ought to apply for allowing the application for impleadment of the Petitioners in the Regular Civil Suit No.702 of 2013 instituted by the Respondent No.1. He submits that the property in respect of which specific performance is applied for in both the suits is one and the same. He submits that even the agreement of which specific performance is applied for in both the suits have been executed by Shri Ananta Pandurang Gaikwad or his Predecessor-in-title. For all these reasons, Mr.Datar submits that the impugned order is liable to be set aside and the Petitioners' application at Ex.17 is liable to be allowed.

8. Mr.Barve, the learned counsel for the Respondent No.1 submits that in a suit for specific performance, there can be only two parties, the proposed vendor and the proposed vendee. He submits that there is no scope for impleadment of any third party. He relies upon the rulings of the Hon'ble Supreme Court in

case of **Kasturi Vs. Uyyamperumal and ors**¹.

9. Mr.Barve further submits that the suit instituted by the Petitioners is hopelessly barred by limitation since, the same has been instituted almost 37 years after the alleged agreement with the Predecessor-in- title of Ananta Gaikwad. He submits that in the said suit since certain reliefs were prayed for against the Respondent No.1, impleadment was sought for and has been allowed. Mr.Barve submits that in the present suit instituted by the Respondent No.1, no relief is being sought against the petitioners. He submits that there is no error in the impugned order and therefore, this petition may be dismissed.

10. At the outset, it is necessary to make it clear that this court, on this occasion, is neither required to nor does it propose to go into any contentions and counter contentions as regards the merits of the two suits seeking specific performance. Further, this court also find merits in the contention of Mr.Barve that ordinarily, in the suit for specific performance, there is no scope to order impleadment of any third parties, since such suits for specific performance are ordinarily required to be confined to the parties

1 (2005)6 SCC 733

who are alleged to have entered into the agreement of which specific performance is applied for.

11. However, the peculiarity of the present matter is that in the suit for specific performance instituted by the Petitioners, the Respondent No.1, who, in a sense, is a third party applied for and was permitted to be impleaded as a party. Mr. Datar, with some justification therefore submits that same logic or reasoning ought to apply to the suit instituted by the Respondent No.1, again, seeking specific performance against the successor of the very same vendor.

12. In a matter of this nature, when, the specific performance applied for is in respect of the one and the same property and from the same vendor or in any case his predecessor-in-title, and discretion, ought to have been exercised to permit impleadment. As it is, this court is informed that two suits are proceeding together in the same court and are at the stage of framing of issues. If, the Respondent No.1 has already been impleaded as a party in Petitioners' suit, then the same should follow in the suit instituted by the Respondent No.1.

13. Taking into consideration these peculiar facts and

circumstances, the impugned order is set aside and the application of the Petitioners at Ex.17 is allowed.

14. Necessary amendment to be carried out within two weeks before the learned Trial Judge from the date of uploading of this order.

15. At the request of the learned counsel for the parties, it is directed that Regular Civil Suit No. 392 of 2019 and Regular Civil Suit No. 702 of 2013 be heard and decided together and expeditiously.

16. It is once again made clear that this court has not adverted to the merits of the matter and therefore, all the contentions of all parties are kept open.

17. The Rule is made absolute in terms of prayer clause (a) of the petition. There shall be no order as to costs.

(M.S.SONAK, J.)

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