

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12800 OF 2017

Shaikh Wajid S/o. Abdul Gani

.... Petitioner

Versus

Smt. Prabhawatibai W/o. Sangram Nijwante
(Teli) & Ors.

.... Respondents

.....

Mr. Avinash D. Hande, Advocate for the petitioner
Mr. J. R. Patil, Advocate for respondents No. 2 to 7

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19TH SEPTEMBER, 2019

PER COURT:-

1. The petitioner is a third party, who is aggrieved by the impugned order dt. 19.06.2015, which is challenged on 21.09.2017 in this petition.

2. The petitioner had preferred Application Exh. 110 in Special Civil Suit No. 51/2010, contending that the plaintiff-widow had agreed to sell the suit property to the petitioner. The agreed consideration was an amount of Rs. 40.00 lakhs. The learned counsel for the petitioner submits that, he had agreed to pay the plaintiff an amount of Rs. 3.50 crores. He, therefore, sought addition in the pending suit of 2010, contending that his rights are affected.

3. I have considered the strenuous submissions of the learned counsel for the respective sides and have gone through the paper-book with their assistance.

4. The petitioner averred in Exh. 110 that, the plaintiff has preferred the suit for seeking cancellation of the sale deed entries in Day Book No. 3587 of 2010, 3588 of 2010, both dt. 18.12.2010 and 3607 of 2010 dt. 20.12.2010. The petitioner-third party is admittedly not connected with this cause of action.

5. It is settled law that, while dealing with an application under Order I Rule 10 of the Civil Procedure Code for seeking addition of a party, the trial Court has to assess as to whether the third party is a necessary respondent or an answering respondent or a property party. It also has to assess, as to whether the suit could not be adjudicated upon in the absence of the third party or that it can be better adjudicated upon by impleading the third party.

6. The issue raised by the petitioner is that, the plaintiff entered into an agreement to sell with the petitioner and he, therefore, needs to enforce the said agreement.

7. In my view, this is a separate cause of action and the law of limitation would also be a relevant factor. If his cause of action is not otherwise barred by the law of limitation, he would be at liberty to initiate appropriate proceedings separately. He clarifies that, Spl. Civil Suit No. 48/2010, filed by this petitioner, which has been dismissed, was not for this specific purpose and was for a different cause of action. I am, therefore, recording this statement of the petitioner as a statement made to the Court and after considering the said statement, I am passing the following order : -

ORDER

- [a] This petition is dismissed.
- [b] If the petitioner desires to initiate appropriate proceedings against Prabhawatibai with regard to the agreement to sell allegedly executed by these parties and if it is otherwise not barred by the law of limitation, he would be at liberty to do so.

[RAVINDRA V. GHUGE]
JUDGE