

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.131 OF 2019

PRAMOD JAYCHAND SAND
VERSUS
RAJANI RAJAN KHANOLKAR AND OTHERS

Mr.C.V.Korhalkar h/f Mr.A.S.Gandhi, Advocate for the petitioner.
Mr.N.L.Jadhav, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 31/07/2019

PER COURT :

1. The petitioner/original defendant No.3 is aggrieved by the order dated 11/09/2018 passed by the Trial Court, by which application Exh.321 filed by the petitioner in RCS No.29/2004, has been rejected.

2. I have heard the learned Advocates for the respective sides and as they have arrived at a consensus, I am recording the brief necessary facts.

3. The plaintiff/wife and defendant No.2/husband sold the property to defendant No.1. Defendant No.3, the petitioner herein,

purchased the property from defendant No.1, who died on 29/07/2006. Defendant No.2 died on 26/11/2012. His wife, the plaintiff, as a LR, is still the plaintiff on record. The children of the plaintiff and deceased defendant No.2 came before the Trial Court and stated that they have no interest in the suit thereby conveying a meaning that the plaintiff, who is their mother, would deal with the suit.

4. On 03/02/2018, the petitioner tendered an application Exh.321 and submitted his lengthy written notes of submissions on 26/03/2018, praying for either framing a preliminary issue as to whether the suit suffers from non-joinder of parties as the children of deceased defendant No.2, were not brought on record or the suit may be dismissed for such non-joinder. The Trial Court rejected Exh.321 concluding that the children of deceased defendant No.2 have already declared that they have no interest in the suit and Exh.321 has been filed at a final stage in the matter.

5. I do not find that the Trial Court has committed any error in passing the said order. This petition is therefore dismissed.

6. The learned Advocate for the petitioner submits that the Trial

Court is already deciding a specific issue No.5 pertaining to whether the suit can be dismissed for want of jurisdiction. It may consider the contentions of the petitioner about non-joinder of parties alongwith issue No.5. The learned Advocate for the plaintiff submits that the plaintiff is agreeable, provided the suit is decided within a specific time frame.

7. I find from the record that though the suit is numbered as RCS No.29/2004, this number is after transfer of the suit and the suit is originally filed in 1990 bearing RCS No.774/1990. Considering that the suit is 29 years old, the consent of the parties is accepted. The Trial Court shall decide all the issues together and would also consider the non-joinder of the LR's of deceased defendant No.2 and will also keep in view that the LR's of defendant No.2 to the extent of the children have themselves declared that they do not intend to participate in the suit. The Trial Court would proceed with the said suit on day to day basis since the suit is 29 years old. No adjournment would be granted to any litigating sides. Any frivolous application filed shall be rejected forthwith and the suit shall be decided in any case on or before 15/10/2019. The Trial Court would not seek extension of time.

(Ravindra V.Ghuge, J.)