

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3423 OF 2019

Pandit Bahuso Khavare	.. Petitioner
Vs.	
Rajaram Shivappa Shinge and ors.	.. Respondents

Mr.Chetan G.Patil I/b Mr.Mandar G.Bagkar, for the Petitioners.
Mr.Prashant P. Kulkarni, for the Respondents No. 3 to 5.

CORAM : M.S.KARNIK, J.

DATE :13th SEPTEMBER 2019

P.C. :

. Heard learned Counsel.

2. The challenge in this Petition is to an order dated 01/10/2018 passed by the trial Court allowing the application for impleading third party as defendants in the Suit. The application is filed below Exhibit 85 in Special Civil Suit No. 93 of 2010.

3. The petitioner – original plaintiff filed Suit for specific performance of contract in respect of Gat No. 93 area admeasuring 40 R. The said Suit is filed in the year 2010. The agreement in question of which specific performance is sought is executed by defendant No.1 - present respondent No.1.

4. The trial Court allowed the application holding that as there is a separate suit being Regular Civil Suit No. 94 of 2007 which is the Suit for partition and separate possession wherein respondents No. 2 to 8 are party defendants, therefore third party applicants are proper parties in the Suit.

5. Learned Counsel for petitioner submitted that the privity of contract was only between plaintiff and defendant No.1 – respondent No.1. Agreement of sale of which specific performance is sought is executed by defendant No.1 in favour of plaintiff. Respondents No.2 to 8 – applicants third parties are strangers to the agreement of sale. According to him, in view of

law laid down by the Apex Court in the case of **Kasturi Vs. Iyyamperumal reported in 2005(6) SCC 733**, the trial Court was not justified in directing the respondents No.2 to 8 to be impleaded as proper parties. He would further submit that the Suit was filed in the year 2010 and it is only in the year 2018 that the application is made by respondents No. 2 to 8 and therefore conduct of the respondents No.2 to 8 dis-entitles them for any relief in the application.

6. Learned Counsel for respondents No. 2 to 8 on the other hand supported the impugned order. He would submit that respondents No. 2 to 8 are party defendants in a separate Suit for partition being Regular Civil Suit No. 94 of 2007 and have a share in the property. He would submit that respondents No. 2 to 8 are in possession of the suit property which is subject matter of Suit for specific performance also. Learned Counsel would invite my attention to the written statement wherein a specific stand has been taken by respondent No.1 – original defendant that properties in question are ancestral properties

and that respondents No. 2 to 8 have share in the said property. Learned Counsel would therefore rely upon decision of the Apex Court in case of **Sumatibai & ors. Vs. Paras finance Co., reported in 2007(1) SCC 82 & decision of this Court bench at Nagpur dated 04/12/2018 in Writ Petition No. 848 of 2017 in the case of Vishweshwar Vs. Uttam** in support of his submissions.

7. In my opinion, the order passed by trial Court calls for interference. The Apex court in the case of **Kasturi** (*supra*) has clearly held that strangers to the agreement of which specific performance is sought are neither necessary nor proper party in a Suit for specific performance of contract. No doubt, respondents No. 2 to 8 are party defendants in a separate Suit for partition filed in the year 2007, however, insofar as agreement on the basis of which specific performance is sought, respondents No. 2 to 8 are not parties to the agreement of sale. The Apex Court in case of **Kasturi** (*supra*) has held that merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be

added as a party defendant in a suit for specific performance of the contract for sale because the third parties therein are not necessary parties as there was no semblance of right to some relief against the third parties to the contract. The Apex Court further held that in a suit for specific performance of a contract for sale the lis between the vendor and the vendee shall only be gone into.

8. Insofar as the share of respondents No., 2 to 8 in the suit property which is subject matter of Suit for specific performance is concerned, the Suit for partition filed in 2007 is already pending. Moreover, it is always open for the respondents No. 2 to 8 to obstruct the execution of the decree on the basis of the title under which respondents No.2 to 8 claim. It has to be kept in mind that the question to be decided in a Suit for specific performance of contract for sale is to the enforceability of the contract entered into between the parties to the contract. If respondents No. 2 to 8 are added in this Suit, the scope of the Suit would be enlarged.

9. In this view of the matter, as respondents No. 2 to 8 have no direct interest in the suit for specific performance because they are not parties to the contract nor do they claim any interest from the parties to the litigation, respondents No. 2 to 8 cannot either be said to be necessary or proper parties. Moreover, even application is filed by respondents No.2 to 8 for impleading the third party applicants as defendants only in 2018 in the Suit for specific performance which was filed way back in the year 2010.

10. The Petition is therefore allowed. Impugned order is set aside. Application Exhibit 85 is dismissed. No order as to costs.

(M.S.KARNIK, J.)

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Urmila P. Ingle
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