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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4001 OF 2016

Vishnu Keru Shirole	..Petitioner.
V/s.	
Dattatraya Keru Shirole & Ors.	..Respondents.

Mr.Pradeep D.Dalvi for the petitioner.

Mr.Girish Agrawal for respondent No.1.

Mr.Sarthak Diwan with Ashutosh M.Kulkarni for respondent No.2.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mr.Dalvi, learned counsel for the petitioner, Mr.Agrawal, learned counsel for respondent No.1 and Mr.Diwan, learned counsel for respondent No.2.

2. Challenge in this petition is to the order dated October 6, 2015 by which the learned trial Judge has permitted impleadment of respondent Nos.2 and 3 as parties in Regular Civil Suit No.226/2007.

3. Mr.Dalvi, learned counsel for the petitioner submits that the said respondents have in fact had taken out an application earlier at Exhibit-18 which came to be dismissed. He, therefore, submits that a

fresh application was not at all maintainable.

4. Mr.Dalvi submits that in any case, respondent Nos.2 and 3 are not at all necessary parties. He points out that the suit is for partition. He points out that in case respondent Nos.2 and 3 have a decree for specific performance, the said decree can always be executed as against the parties and their heirs. However, their presence is not all necessary in this suit. On this ground, he submits that the impugned order warrants interference.

5. Mr.Diwan, learned counsel for respondent No.2 submits that respondent No.2 has a decree for specific performance in relation to the suit property. The said decree cannot be defeated by the petitioner by filing a suit for partition against his brother and thereafter create obstacles for execution of the said decree. He submits that respondent Nos.2 and 3 are necessary and in any case proper parties to the suit. He, therefore, submits that this petition may be dismissed.

6. The rival contentions now fall for my determination.

7. The issue of impleadment of the parties is not an issue which goes to the initial jurisdiction to the Court but there is an element of discretion involved. In the facts of the present case, it cannot be said that respondent Nos.3 and 4 are not even proper parties to the suit. Learned trial Judge has exercised discretion fairly and it cannot be said that presence of the said two parties will embarrass the

proceedings in the suit or that the presence of the two parties is not at all necessary in the suit. Admittedly, respondent Nos.2 and 3 have a decree of specific performance in relation to the suit property or a portion thereof. In such circumstances, the learned trial Judge has exercised discretion in their favour. It cannot be said to that there is any error of jurisdiction involved or that the discretion has been exercised unreasonably.

8. Learned trial Judge is right in holding that the application at Exhibit 18 taken up by respondent Nos.2 and 3 was not decided on merits. However, it was a case where respondent Nos.2 and 3 should have been required to pay the costs. Respondent Nos.2 and 3 had not been diligent in pursuing the application and it came to be dismissed. Thereafter, they did not apply for restoration, but chose to file fresh application. In order to promote substantial justice, the erroneous procedure adopted by respondent Nos.2 and 3 can be overlooked. However, respondent Nos.2 and 3 have by this act, delayed the proceedings in the suit for which they are liable to pay costs which are now assessed at Rs.20,000/-. This means that each of the respondents will have to pay costs of Rs.10,000/- to the petitioner-plaintiff.

9. The costs will have to be paid within a period of four weeks from today in so far as respondent No.2 is concerned. In so far as respondent No.3 is concerned, the costs will have to be paid within four

weeks from the date petitioner brings this order to the notice of respondent No.3.

10. This petition is, therefore, partly allowed. The order of impleadment is not interfered with, however, respondent Nos.2 and 3 are directed to pay costs as aforesaid to the petitioner.

11. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)