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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4290 OF 2017

Mrs.Besbie Sudhakar Rai	..Petitioner.
V/s.	
Vinod Dharod & Ors.	..Respondents.

Mr.K.S.Dewal I/b. Roshan S.Tanna for the petitioner.

Mrs.Gauri Godse for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : APRIL 15, 2019

ORAL JUDTMENT

Heard Mr.Dewal, learned counsel for the petitioner and Ms.Godse, learned counsel for respondent No.1.

2. Challenge in the petition is to the order dated April 1, 2017 by which learned trial Judge has rejected the petitioner's application under Order 1 Rule 10 of the Code Civil Procedure ('the CPC' for short) for impleadment as defendant in Special Civil Suit No.614/1990.

3. Mr.Dewal, learned counsel for the petitioner submits that defendant No.1 by a Will dated February 1, 1996 had bequeathed the suit property in favour of the petitioner. He submits that the suit seeks

specific performance of the very same property. He submits that the defendants in the suit who are legal representatives of deceased defendant No.1 are really not contesting the suit and some of them have filed consent terms to compromise. He submits that ultimately, if the claim of the petitioner is accepted under the Will dated February 1, 1996, then, the petitioner cannot be made to suffer a decree for specific performance. He submits that the petitioner is a necessary party and the application seeking impleadment could not have been dismissed only on the ground of delay. He submits that Order 1 Rule 10 of the CPC permits the Court to implead a necessary party at any stage of the suit. He submits that even the law of limitation only debars remedy but it does not destroy the right which is vested in the party. For all these reasons, he submits that the impugned order deserves to be set aside and the petitioner deserves to be impleaded as a defendant in the suit.

4. Ms.Godse, learned counsel for the respondent-plaintiff defends the impugned order on the reasoning reflected therein. She points out that some of the defendants are contesting the suit. She points out that this application for impleadment was made when the matter was posted for final arguments. She points out that on the basis of the alleged Will dated February 1, 1996, the petitioner has not taken any steps whatsoever to establish his rights. For all these reasons, she submits that the learned trial Judge has correctly exercised discretion

and rejected the petitioners application seeking impleadment.

5. The rival contentions now fall for my determination.

6. The suit is for specific performance to which the plaintiff has impleaded the vendor i.e. defendant No.1 as a party. Upon her demise, her legal representatives have been brought on record.

7. So far as the Will dated February 1, 1996 is concerned, the issue as to whether the same is genuine or not is really not an issue which ought to be permitted to be agitated in this suit for specific performance. This is more so because, record indicates that on the basis of the alleged Will dated February 1, 1996, the petitioner had taken no steps to either probate the Will or otherwise enter his name in the revenue record relating to the suit. Besides, it is also not believable that the petitioner was not aware of the pending Special Civil Suit No. 614/1990 which was instituted in the year 1990.

8. The issue of impleadment of the parties is not an issue which goes to the root of the jurisdiction but is essentially a matter which relates to the discretion of the Court. In the present case, the application for impleadment was made after 26 years after the institution of the suit or at-least 20 years after the alleged Will dated February 1, 1996 was made. Even defendant No.1 had died on December 12, 1996 and this application for impleadment was made almost 20 years after the demise of defendant No.1.

9. In the aforesaid circumstances, it cannot be said that the discretion has been exercised unreasonably by the learned trial Judge. The impugned order warrants no interference. If at all the petitioner has any independent right, it is always open to the petitioner to take out appropriate proceedings before the appropriate forum. The impugned order in any event does not affect or has the affect to destroy any rights of the petitioner, if any.

10. The impugned order will obviously not come in the way of the petitioner to establish his right, if any, vested in the petitioner. Besides, as pointed out, all objections of the respondents *inter alia* on the issue of limitation, etc. will also have to be gone into in case any independent proceedings are at all instituted by the petitione r.

11. Accordingly, this petition is dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)