

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4641 OF 2015
WITH
CIVIL APPLICATION NO. 2285 OF 2016

M/s.Sai Prasad Enterprises .. Petitioner
Vs.
Shri Rohan Prabhakar Bachewar & ors. .. Respondents

Mr.Akshay S.Malviya a/w Mr.Kailash Baug, Advocate for the
Petitioner.
Mr.B.B.Sharma, for Respondents No. 7 to 9.

CORAM : M.S.KARNIK, J.

DATE : 27th SEPTEMBER 2019

P.C. :

. Not on board. Taken on board.

2. Heard learned Counsel for the petitioner.

3. By this Petition, petitioner challenges the order passed by the trial Court below Exhibit 38 rejecting the application made by the petitioner for impleadment as a party

defendant in Special Civil Suit No. 269 of 2011. It is the case of the petitioner that he had purchased the suit premises on 04/03/2005 from respondents No. 2 to 6 by paying full consideration. There was compromise decree in Special Civil Suit No. 06 of 2007 which he had filed. According to him, suit premises is in his possession.

4. It is the case of the petitioner that the respondents No. 2 to 6 agreed to sell leasehold rights in their property to the respondent No.1 – plaintiff on 27/07/2004 and 12/09/2007. The Suit is filed by respondent No.1 for specific performance of contract. In the said Suit, the petitioner sought impleadment. It is the case of the respondent No.1 plaintiff before the trial Court that the petitioner is a stranger to the agreement and therefore in a Suit for specific performance filed by respondent No.1, impleadment of the petitioner is not necessary.

5. Relying on the decisions of the Apex Court in the case of **Anilkumar Singh Vs. Shivnath Mishra Alias Gadasa Guru**

1995 (3) SCC 147 & in the case of **Bharat Karsondas Thakkar Vs. Kiran Construction Co. & Ors.** 2008(2) SCC 919, the trial Court rejected the application by observing that petitioner is neither a necessary nor a proper party. No doubt, the Apex Court has held that stranger to an agreement is not a necessary party in a Suit for specific performance which is essentially for determination of lis between the parties to the contract. In the present case, however, the petitioner claims that there is a decree in their favour pursuant to the compromise entered into between the petitioner and respondents No.2 to 6. The petitioner's agreement is prior in point of time to the agreement executed by the plaintiff with respondents No.2 to 6. The possession of the suit premises is with the petitioner. The petitioner is claiming under the compromise decree executed by respondents No.2 to 6 in their favour, in my opinion, the application for impleadment filed by the petitioner deserves to be allowed. Moreover, respondents have failed to appear despite service of notice. An affidavit of service has been filed by the petitioner. Even otherwise as there is no contest to this

Petition, the petition is allowed with no order as to costs.
Impugned order is set aside. Application Exhibit 38 is allowed.

6. In view of the disposal of the Writ Petition, Civil
Application does not survive and the same also stands disposed
of.

(M.S.KARNIK, J.)

Urmila
P. Ingle

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by Urmila P.
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