

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3467 OF 2019

Shri. Sushil Chunilal Anand & Ors. .. Petitioner

vs.

Shri. Hrishikesh Dasharath Galande & Ors. .. Respondents

Mr. S. R. Ronghe for the Petitioner.

Mr. P. U. Gaikwad for Respondent No.1 & 2.

CORAM : M. S. SONAK, J.

DATE : 03 APRIL 2019.

ORAL JUDGEMENT :

Heard Mr. Ronghe for the petitioners and Mr. Gaikwad for respondents Nos. 1 and 2.

2] Respondents Nos. 1 and 2 are plaintiffs in the suit and therefore they are the only contesting parties.

3] Respondent Nos. 3 to 10 are already served and respondent No. 11 is also a defendant in the suit.

4] Accordingly, Rule. Rule is made returnable forthwith.

5] Challenge in this petition is to the order dated 26th March, 2018 by which the petitioner's application for impleadment as defendants in RCS No. 1546/2016 came to be dismissed.

6] Mr. Ronghe submits that the main relief in the suit is for declaration that the agreement and power of attorney with the builders / developers are null and void. It is on the basis of these documents that the petitioners have already acquired interest in the apartments in the suit building / suit property. Therefore, he submits that the grant of any relief in the suit will bind to the petitioners. Therefore, he submits that the petitioners are necessary parties or in any case, proper parties of the suit. He points out that the petitioners herein instituted RCS No. 807/2017 in which they have impleaded respondent Nos.1 and 2 as defendants.

7] Mr. Gaikwad, the learned counsel for respondent Nos.1 and 2, defends the impugned order on the basis of reasoning reflected therein. He submits that, respondent Nos.1 and 2 have not sought for any relief against the petitioners. He submits that, respondent Nos.1 and 2 are the *dominus litus* and therefore, they cannot be forced to implead any persons as parties to the suit against their will. He submits that, the petitioners are neither necessary nor proper parties in the suit and their impleadment will

embarrass the trial. Therefore, Mr. Gaikwad submits that the petition may be dismissed.

8] The rival contentions now fall for determination.

9] In the facts of the present case, one of the main reliefs relates to the agreement and power of attorney, on the basis of which, the petitioners claimed to have acquired some interest in the suit property. If reliefs as prayed for is granted in the suit, the rights of the petitioners will be affected by the same. This is not a case, where the petitioners claim to have acquired interest during pendency of the suit. Accordingly, it cannot be said that the petitioners are not even proper parties to the suit. In fact, the presence of petitioners will enable the Court to resolve the disputes between the parties in effective manner. The presence of the petitioners will enable the learned Trial Court to make effective decree and avoid multiplicity of proceeding.

10] Besides, as pointed out by Mr. Ronghe, even some of the petitioners have instituted RCS No. 805/2017 in which they claim that they were dispossessed from the suit property by the respondent Nos.1 and 2. In such case, the respondents Nos. 1 and 2 have been impleaded as

defendants, as they ought to have been.

11] For the aforesaid reasons, the impugned order is set aside and the petitioners herein are directed to be impleaded as defendants in the suit. Mr. Ronghe, on the basis of instructions submits that petitioners herein will be represented by one and the same advocate in the suit. This is noted, as otherwise the relief in this petition may be misused to delay the proceedings in the suit. In any case, the petitioners are directed to co-operate in the matter for expeditious disposal of the suit and not to delay the proceedings.

12] The respondent Nos. 1 and 2 to carry out necessary amendment for impleading the petitioners in this petition, as party defendants in the suit within a period of 4 weeks from today. If the petitioners desire, they are at liberty to file written statement. They may do so within a period of 8 weeks from today, i.e., within 4 weeks from the date of their formal impleadment without seeking any further adjournment.

13] The learned Trial Judge is directed to dispose of the suit as expeditiously as possible.

14] All the concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)