

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12178 OF 2017

M/s. Vijay Suraksha Realty L.L.P.

... Petitioner

Vs.

Juber Abdul Hamid Suse & ors.

... Respondents

Mr. Sandesh D. Patil a/w. Ms.Divya A. Pawar(Patil) i/b. Chintan Shah for the Petitioners.

CORAM : N. J. JAMADAR, J.

DATED : 14th OCTOBER, 2019

P. C. :

. Heard learned counsel for the petitioner.

2. The challenge in this petition is to an order dated 17.02.2017 passed by the Learned Civil Judge, Senior Division, Thane on an application (Exhibit – 29) in Regular Civil Suit No. 693 of 2014 whereby the application of the petitioner -applicant to implead him as a party defendant to the said suit, under the provisions of Order I Rule 10 of the Code of Civil Procedure (the Code) came to be rejected.

3. The Regular Civil Suit No. 693 of 2014 has been instituted by the respondent Nos. 1 to 4 against the respondent Nos. 5 to 20 seeking partition and separate possession of in all 7 properties with the assertion that the plaintiffs have a share in those properties being the children of the deceased Sayeed Gulam Ghos Suse, by his first wife. The defendants are stated to be the legal heirs of the deceased Gulam Ghos Suse claiming through the second wife.

4. It is the claim of the applicant that the some of the defendants had entered into a development agreement with one Jaywant Arjun Patil in respect of one of the suit lands i.e. Survey No. 62/2, situated at Mouje Vadavali, Taluka and District Thane on 21.07.2006. The said Jaywant Arjun Patil executed a further registered development agreement with the applicant on 11.09.2006 in respect of the said suit land. The applicant claimed to have entered into the possession of the suit land bearing Survey No. 62/2. Since the applicant has a direct right,

title and interest in one of the suit lands i.e. survey No. 62/2, the applicant is a necessary party to the said suit. Thus, the applicant sought impleadment as a party thereto.

5. The Learned Civil Judge was persuaded to reject the application. It was, *inter alia*, observed that the suit has been instituted by the plaintiffs claiming inheritance in the suit land. The interest of the applicant is restricted to one of the suit lands. The applicant has not placed on record documents to substantiate his claim. In the circumstances, if the applicant is impleaded as a party defendant it would change the flow and nature of the suit.

6. Learned Counsel for the petitioner urged that the Learned Civil Judge committed an error in not keeping in view the settled principles as regards the impleadment of a party to the suit either as a necessary or a proper party. It was submitted that the presence of the applicant before the Court is necessary for an effectual and complete adjudication of the dispute and, in

fact, no effective decree can be passed in the absence of the applicant as a party to the said suit. The learned counsel for the petitioner further urged that the Learned Judge has probably been swayed by the principles which govern the impleadment of a party in a suit for specific performance of the contract; which are not attracted in a suit based on title. Thus, relegating the applicant to the remedy of a separate suit, in the circumstances, was neither legally sustainable nor in conformity with the governing principle of avoiding multiplicity of the proceedings.

7. In support of the submission, the learned counsel for the petitioner placed reliance on the Judgment of the Supreme Court in the case of *Mumbai International Airport Private Limited v/s. Regency Convention Centre and Hotels Private Limited and others*¹. In this case after adverting to the legal connotations of “necessary party” and “proper party” and the distinction therein, the Supreme Court had also examined as to whether there was any cleavage of judicial opinion in the

¹(2010) 7 SCC 417)

decisions in the cases of *Kasturi v. Iyyamperumal*² and *Sumtibai v. Paras Finance Co.*³, and concluded as under :

“26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in *Kasturi* and *Sumtibai* are with reference to the facts and circumstances of the respective cases. In *Kasturi* this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai* this Court held that a person having semblance of a title can be considered as a proper party. *Sumtibai* did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did *Kasturi* lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.”

8. The power of the Court to add a party to the proceeding is indisputably wide. It is well recognised that addition of a party to the suit is not a matter of initial jurisdiction but one of judicial discretion. The guiding factor is whether the presence of the proposed party is necessary for an effectual and complete adjudication of the dispute.

² (2005)6 SCC 733.

³ (2007) 10 SCC 82.

9. Reverting to the facts of the case, it is imperative to note that a suit under Mohammedan Law claiming inheritance in the properties left by a deceased Mohammedan is in the nature of a suit for administration of the estate. The necessary parties are the persons entitled to inherit the property either as the sharers, residuaries or distant kindard etc. The case of the applicant is based on the alleged execution of the first development agreement by some of the defendants in favour of Mr. Jaywant Patil, who, in turn, executed the development agreement in favour of the applicant. The question as to whether these agreements constitute conveyance and confer the right, title and interest in the suit land cannot be examined in the suit for administration. The Learned Civil Judge was thus justified in arriving at the conclusion that the applicant had the remedy to institute a suit, in assertion of the rights arising out of the alleged development agreement. The presence of the applicant in the suit, wherein inheritance is claimed on the basis of the kinship with the deceased is not necessary for effectual and complete adjudication thereof.

10. Undoubtedly, if the applicant has the right, title and interest in one of the subject matter of the suit and the impleadment of the applicant therein is opposed by the plaintiffs, the decree therein may not bind the applicant. Therefore, the apprehension on the part of the applicant that the remedy of a separate suit is not effective does not seem to be well founded.

11. With the aforesaid observations the petition stands dismissed.

(N. J. JAMADAR, J.)