

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10737 OF 2018

Karbhari Dagu Jadhav

...Petitioner

vs.

M/s. Sindhudurg Estates and Ors.

...Respondents

Mr. B.G. Ligade, for the Petitioner

Mr. P.K. Dhakephalkar, Sr. Advocate a/w. Mr. J.G. Reddy, for
Respondent Nos. 1 and 2.

Ms. Shivani Samel, for Respondent Nos. 3A to 3C.

CORAM : M. S. SONAK, J.

DATE : APRIL 24, 2019

ORAL JUDGMENT:

. Heard Mr. Ligade, for the Petitioner and Mr. Dhakephalkar,
learned senior counsel for Respondent Nos. 1 and 2 and Ms.
Shivani, learned counsel for Respondent Nos. 3A to 3C.

2. Rule. Rule is made returnable forthwith with consent of and
at the request of learned counsel for the parties.

3. Even otherwise by an order dated 13th March, 2019 it was
made clear that this Petition will be disposed of finally at the stage
of admission.

4. The challenge in this Petition is to the order dated 16th July, 2018 by which the learned trial Judge has dismissed the Petitioner's application (Exhibit 202) seeking to implead himself as co-Plaintiff in Special Civil Suit No. 171 of 2002.

5. Mr. Ligade, learned counsel for the Petitioner states that the original Plaintiff in the suit i.e. Respondent Nos. 3A to 3C have no objection to the impleadment of the Petitioner as Plaintiff in the suit. He states that all the Plaintiff will be represented by one and the same advocate. He states that the Petitioner had made it clear that the Petitioner seeks to lead no evidence in the matter since the Petitioner has already been examined as witness in the matter. He submits that the suit property has already been purchased by the Petitioner from the original Plaintiff by way of a registered sale deed dated 5th March, 2008. He submits that there is absolutely no conflict between the Petitioner and the original Plaintiff. He submits that if any decree is passed in the suit, in any case, it is the Petitioner who would benefit by such decree. For all these reasons, he submits that the Petitioner's application (Exhibit 202) was required to be allowed.

6. Ms. Shivani, learned counsel for Respondent Nos. 3A to 3C who are the original Plaintiff hands in an affidavit filed by Respondent Nos. 3A to 3B stating that they have no objection whatsoever to the impleadment of the Petitioner as co-Plaintiff. They affirmed that the suit property has been sold by them to the Petitioner. This affidavit is taken on record.

7. Mr. Dhakephalkar, learned senior counsel for Respondent Nos. 1 and 2 who are the original Defendants in the suit however opposes the grant of any relief. He submits that there is absolutely no privity of contract as between the Petitioner and Respondent Nos. 1 and 2. He submits that from the nature of reliefs claimed, it is very clear that reliefs based upon the alleged cause of action which accrued to the original Plaintiff, was entirely personal to the original Plaintiff. He submits that if the Petitioner is permitted to implead as co-Plaintiff then entire nature and complexion of the suit will change. He submits that on the basis of such impleadment the Petitioner may chose to Appeal the decree of the dismissal of the suit, if made, even though the original Plaintiff may not be interested in appealing the same. He therefore submits that the impugned order was correctly made and the same

warrants no interference whatsoever.

8. The rival contentions now fall for determination.

9. The original Plaintiff i.e the predecessor of Respondent Nos. 3 A to 3C instituted Special Civil Suit No. 171 of 2002 seeking *inter alia* reliefs of declaration and injunction in relation to the suit property. Pending such suit, the Plaintiff vide a registered sale deed dated 5th March, 2008 sold and transferred the suit property in favour of the Petitioner for the consideration of Rs. 60 lakhs. The Petitioner, in fact examined himself as a witness in the suit and has made this position quite clear. In a sense, therefore the Petitioner has stepped into the shoes of the original Plaintiff. The Petitioner in these circumstances, does not apply for substitution as Plaintiff but seek impleadment as co-Plaintiff along with the by appointing the original Plaintiff.

10. According to me, the application made by the Petitioner was required to be allowed in the peculiar facts and circumstances of the present case. As noted earlier, the Petitioner has stepped into the shoes of the original Plaintiff. Even if the suit were to be

decreed as it stand, certainly the Petitioner would have secured the benefit of such decree particularly since the Petitioner claims through the original Plaintiff. On the same principle, if the suit were dismissed, the Petitioner could always have sought for leave to Appeal against the decree of the dismissal of the suit. These are good ground to allow this Petition.

11. In the present case, the Petitioner has made it clear that the Petitioner does not seek to lead any further evidence. The learned counsel for the Petitioner has also made it clear that all the Plaintiff including the Petitioner if allowed to be impleaded as co-Plaintiff, will be represented by one and the same advocate. Therefore, there is no question of any inter-se conflict between the Plaintiff. The Plaintiff in fact support the Petitioner's application.

12. The contention on behalf of the Respondent Nos. 1 and 2 that the fundamental nature of the suit will change cannot be accepted in the peculiar facts and circumstances of the case. The fundamental nature of the suit remains what it was. Pending the suit, there was change of ownership. The new owner seeks to pursue the suit, in this case along with the previous owner. In

such a situation, there is no change much less fundamental change in the nature of the suit. In fact, such impleadment will, to a certain extent avoid multiplicity.

13. The record indicates that as it is Respondent Nos. 1 and 2 have instituted a suit questioning the transfer of the suit property in favour of the Petitioner. In such a suit, the original Plaintiff as well as the Petitioner are parties. Both the suit are being tried together. This is an additional reason as to why the application taken out by the Petitioner was required to be allowed.

14. Accordingly for the aforesaid reasons, the impugned order dated 16th July, 2018 is set aside and the Petitioner's application below Exhibit 202 is allowed.

15. The original Plaintiff to carry out the amendment to the Plaint within a period of two weeks from today and serve the amended copy of the Plaint to the Defendants in the suit.

16. It is further made clear that the consistent with the statement made, the Petitioner will not be entitled to lead any further

evidence in the matter. Further the Petitioner will not insist upon the representation by any separate advocate. This means that all the Plaintiff including the Petitioner will have to be represented by one and the same advocate.

17. It is further made clear that the observations made in this order regards the transfer or conveyance of the suit property, in favour of the Petitioner may not be taken as an approval of such transfer or even the acceptance regards the factum of transfer. The observations are only in the context of registered sale deed which is not disputed and further only for the purpose of deciding the issue of impleadment of the Petitioner as co-Plaintiff. Otherwise all contentions of all the parties on merits of the suit are expressly kept open.

18. If the Respondent Nos. 1 and 2 i.e. Defendants in the suit desire to file any additional written statement, they are at liberty to do so within a period of two weeks from the date of receipt of amended copy of the Plaint.

19. Taking into consideration that the fact that two suits relate to

the year 2002 and 2008, the learned trial Judge is directed to dispose of both the suits as expeditiously as possible, as the suits have reached the stage of final argument.

20. Rule is made absolute in the aforesaid terms.

21. There shall be no order as to the costs.

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

(M. S. SONAK, J.)