

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1180 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
Mathuradas Thobandas and others ... Respondents

WITH

WRIT PETITION NO.1181 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
Ramkumar Mataprasad Mishra and others ... Respondents

WITH

WRIT PETITION NO.1182 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
V. S. Desai and others ... Respondents

WITH

WRIT PETITION NO.1183 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
Chandulal Bhaichand & Dilipkumar Popatlal & others ... Respondents

WITH

WRIT PETITION NO.1184 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
Gayatridevi Gupta and others ... Respondents

WITH

WRIT PETITION NO.1185 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.
Ramkumar Mataprasad Mishra and others ... Respondents

WITH

WRIT PETITION NO.1186 OF 2019

Jayesh Navinchandra Majitha ... Petitioner
Vs.

Suresh V. Uttmani and others ... Respondents

WITH
WRIT PETITION NO.1187 OF 2019

Jayesh Navinchandra Majitha ... Petitioner

Vs.

Jayprakash Jadurai and others ... Respondents

Mr. Raj Patel i/b. Mulani & Co. for Petitioner.

Ms Eventa A. Gonsalves i/b. Legal Bond for Respondents No.3 and 4.

CORAM : R. G. KETKAR, J.

DATE : APRIL 12, 2019

P.C. :

Heard Mr. Patel, learned Counsel for the petitioner and Ms Gonsalves, learned Counsel for the respondents No.3 and 4 at length.

2. By these Petitions under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the order dated 30.07.2018 passed by the Appellate Bench of the Small Causes Court in Revision Applications preferred by respondents No.3 and 4 herein. By these orders, the Appellate Court allowed the Revision Applications filed by respondents No.3 and 4 and set aside the orders dated 04.03.2017 passed by the learned trial Judge. The Appellate Court allowed the applications filed by the respondents No.3 and 4 and directed the plaintiffs to implead respondents No.3 and 4 as party defendants in the Suits filed by the plaintiffs by carrying out necessary amendment.

3. Since the common questions of law and facts arise in these Petitions, facts from Writ Petition No.1180 of 2019 are taken into consideration.

4. Respondents No.3 and 4 filed application exhibit-15 in R.A.E.Suit No.302/470 of 2014 for impleading them as party defendants in that Suit inter alia contending that they have purchased the suit property by Conveyance Deed dated 21.09.2010. The Conveyance Deed was executed by plaintiff, his father as also brother Manish Majithia in favour of respondent No.3. As respondents No.3 and 4 have purchased the property, they became owners. They ought to have been joined in the Suit. Respondents No.3 and 4, therefore, made application for impleading them. The plaintiff objected the application on the ground that they are neither proper nor necessary parties. The Conveyance Deed is challenged by him by filing Suit No.100 of 2011 on the Original Side of this Court and the same is pending. The plaintiff further contended that he had never authorized his father to execute the sale deed and transfer his share in the suit premises. By order dated 04.03.2017, the learned trial Judge rejected the application. In paragraph 4, the learned trial Judge observed that mere fact that suit property is purchased by respondents No.3 and 4 is not enough to contend that they are the landlords. The learned trial Judge further proceeded to observe that one of the co-owners can file eviction suit against the tenant. If the respondents No.3 and 4 are added as defendants, it will change the nature of the Suit and will enlarge the scope of the Suit.

5. As against this, in paragraph 10, the Appellate Court observed that unless and until the Conveyance Deed is held illegal or nonest by the High Court, respondents No.3 and 4 are the owners of the suit property. In view thereof, they are the necessary party to the Suit.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondents No.3 and 4 are claiming

ownership on the basis of the Conveyance Deed dated 21.09.2010. It is no doubt true that petitioner-plaintiff had challenged the Conveyance Deed by filing Suit on the Original Side of this Court and the same is pending. So long as the Conveyance Deed is not set aside, prima facie, at this stage, it cannot be said that respondents No.3 and 4 are not the owners of the suit property. In view thereof, no case is made out for interfering with the impugned orders. Hence Petitions fail and the same are dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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