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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13791 OF 2017

Shreeji Developers & Ors.

..Petitioners.

V/s.

Maruti Moru Deshmukh & Ors.

..Respondents.

Mr.Madhav Jamdar i/b. Sameer K.Sawant for the petitioners.

Mr.S.A.Rajashirke with Prashant Kulkarni for respondent Nos.1 A to 1E & 2.

CORAM: M.S.SONAK, J.

DATE : MARCH 15, 2019

ORAL JUDGMENT

Heard Mr.Madhav Jamdar, learned counsel for the petitioner and Mr.S.A.Rajashirke, learned counsel for the respondents.

2 Challenge in this petition is to the order dated April 15, 2016 by which learned trial judge allowed the Chamber Summons No.2354/2015 seeking leave to amend the plaint.

3. Mr.Jamdar, learned counsel for the petitioner submits that the suit was instituted in the year 1983 and, therefore, the amendment was highly belated. Without prejudice, Mr.Jamdar

submits that the petitioners who is now sought to be impleaded as a party to the suit by the impugned order, is neither necessary nor a proper party to the suit. Mr.Jamdar submits that from the reading of the main reliefs of the plaintiffs, it is clear that the plaintiffs seek declaration that the agreement dated May 27, 1975 entered into between defendant No.1 and defendant No.4 is null and void or in the alternative, a declaration that the plaintiff and defendant No.1 be jointly deemed to be purchasers of the such agreement of sale dated May 27, 1975 and all consequential reliefs thereof.

4. Mr.Jamdar submits that defendant No.1 has since expired and the petitioners have acquired some interest from the legal representative of defendant No.1, who are now brought on record. He submits that the interest of the original plaintiff is obviously adverse to the interest of the original defendant No.1. Therefore, relying upon the decision in the case of *a Kasturi V/s. Iyyamperumal and others*¹ it is submitted that the respondents are neither necessary nor proper parties in the suit. For these reasons Mr.Jamdar submits that the impugned order is liable to be set aside.

5. Mr.Rajashirke, learned counsel for the respondent-plaintiff defends the impugned order on the basis of reasoning

1 AIR 2005 Supreme Court 2813

reflected therein.

6. The rival contentions now fall for my determination.

7. Learned trial Judge has noted that the amendment in the present plaint was necessitated on account of subsequent developments which took place during the pendency of the suit. Since the suit was instituted in the year 1983, the proviso to Order 6 Rule 17 of the Civil Procedure Code is not applicable to the present case. Learned trial Judge has specifically kept the issue of limitation open. Accordingly, it cannot be said that there is any jurisdictional error in the impugned order merely because the suit was of the year 1983 and the chamber summons seeking amendment was taken out in the year 2015. The chamber summons was taken out in the context of certain transactions which took place in the year 2012 during the pendency of the suit.

8. The principles in *Kasturi (supra)* really will not be applicable to the facts of the present case since it is not the case where the plaintiffs seek relief of specific performance. However, even if it is assumed that an alternate prayer made by the plaintiffs is in the nature of prayer for specific performance, even then, the principles will really not apply.

9. Mr.Jamdar made a specific reference to the observations

in paragraphs 6 to 10 of the judgment. In these paragraphs, the Hon'ble Supreme Court has observed that even in a suit for specific performance, a purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, a necessary party. In the present case, the respondent's claim is not adverse to the claim of defendant No.1 or the legal representatives of defendant No.1.

10. Further, the Supreme Court has referred to the two tests to be satisfied for determining the question as to who is a necessary party. The tests are (i) there should be a right to some relief against such a party in respect of of the controversies involved in the proceedings and (ii) no effective decree can be passed in absence of such party.

11. In the present case, both these tests stand satisfied. There is really no occasion for going into the merits and demerits of the respective claims. However, it is necessary to note that it is an alternative claim of the plaintiffs that he is also entitled to right under the agreement for sale dated May 27, 1975 along with defendant No.1. Now, the legal representatives of defendant No.1 were purporting to transfer their rights or interests in the suit

property in favour of the petitioners. Though, the plaintiffs have a right to some relief against the petitioners in the context of the agreement dated May 27, 1975, in any case, the decree which the plaintiffs may ultimately secure in the matter against the said legal representatives of deceased defendants No.1, may not be effective decree particularly *qua* the respondents.

12. Thus, even applying the principles laid down in *Kasturi* (*supra*), it cannot be said that there is any jurisdictional error in the view taken by learned trial Judge.

13. For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed.

14. There shall be no order as to costs.

15. It is made clear that any observations in the impugned order or for that matter in the present matter need not influence learned trial Judge while deciding the suit on merits and in accordance with law. The observations are only in the context of deciding whether leave to amend was rightly granted or not and, therefore, these observations are not reflection on the merits and demerits of the case.

16. At this stage, Mr. Jamdar, learned counsel for the petitioners points out that because the present petition was pending,

no written statement was filed by the petitioner. He points out that, in the meanwhile, learned trial Judge has made 'no written statement order'. Mr.Rajashirke, learned counsel for the plaintiffs graciously consents to the setting aside of the 'no written statement order' dated January 10, 2018 even though there is no formal challenge to this order in this petition. Accordingly, leave is granted to the petitioners to forthwith amend the prayer clause in the present petition so as to incorporate the challenge to the order dated January 10, 2018. Since the said prayer is not opposed, the order dated January 10, 2018 is set aside. The petitioners are granted liberty to file the written statement within a period of two weeks from the date this order is uploaded on the website.

17. Accordingly, though the petition against the impugned order dated November 15, 2016 is dismissed, the order dated January 10, 2018 is set aside and the petitioner is granted liberty to file the written statement within two weeks from today.

18. The petition stands disposed in the aforesaid terms.

19. There shall be no order as to costs.

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

(M.S.SONAK, J.)