

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5744 OF 2018

Bhagwan Kisan Bahirat
(deceased) through L.Rs.

1A. Pramila Bhagwan Bahirat and Ors. ... Petitioners

Vs.

Panacea Builders and Anr. ... Respondents

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Ms. Manjiri Parasnis a/w Mr. Sagar Bhirange for the petitioners.
Mr. Sudhir V. Sadavarte for respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 27th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners are the original plaintiffs. In the suit the petitioners claimed to be the owners of the suit property. In the suit they have prayed for declaration in respect of Development Agreement and Power of Attorney dated 21.8.2006 as illegal, null and void. The plaintiffs have further prayed for declaration of sale deed dated 6.8.2008 which is executed by defendant No.2 in favour of defendant No.1 as illegal, null and

void. In the suit the defendant No.1 is shown as Panacea Builders through its partners Anandram Dagaduram Mutha. The defendant No.2 is shown as Rajendra Uttamchand Dugad.

3. The plaintiffs are challenging the sale deed dated 6.8.2008 executed by defendant No.2 in favour of defendant No.1.

4. During the pendency of the suit, the plaintiffs filed an application below Exhibit 86 stating that the defendant Nos.1 and 2 sold the suit property to Parmar Panacea Constructions by executing sale deed dated 6.8.2008. It is further stated that at the time of filing of the suit M/s. Parmar Panacea Constructions was not made party in the said suit. It is further stated that during the pendency of the suit, M/s. Parmar Panacea Constructions executed sale deed dated 29.3.2014 in favour of M/s. Golden Magnum in respect of suit property. It was therefore prayed that M/s. Parmar Panacea Constructions and M/s. Golden Magnum be impleaded as party defendants in the suit through their partners. The Trial Court partly allowed the application. The Trial Court allowed the plaintiffs to add only M/s. Golden Magnum as a party

defendant to the suit. However prayer of the plaintiffs to add M/s. Parmar Panacea Constructions was rejected. According to the Trial Court, in the application the plaintiffs have taken a plea which is contrary to the pleadings in the plaint. In the opinion of the Trial Court the plaintiffs in the plaint have contended that sale deed dated 6.8.2018 was executed by defendant No.2 in favour of defendant No.1. It is now their contention that defendant Nos.1 and 2 have executed the sale deed in favour of M/s. Parmar Panacea Constructions. This according to the plaintiffs was a mistake on their part. Learned counsel for the respondent No.1 supported the impugned order. He would contend that already a plea is taken in the written statement that the suit suffers from non joinder of necessary party. The sale deed dated 6.8.2008 is executed in favour of M/s. Parmar Panacea Constructions through its partners Anandram Dagaduram Mutha. In any case he would submit that M/s. Golden Magnum are already impleaded as party defendant in the suit to whom the property is said to be sold.

5. I have gone through the order passed by the Trial Court. In my opinion, the application Exhibit 86 deserves to be

allowed. In the plaint there is a relief sought for declaration that the sale deed dated 6.8.2008 executed by defendant No.2 in favour of defendant No.1 is illegal. Defendant No.1 is shown as Panacea Builders. Even in the written statement an objection is raised that the suit suffers from non joinder of necessary party.

6. In this view of the matter, it is apparent that there was mistake on the part of advocate in not impleading M/s. Parmar Panacea Constructions as party defendant. When the sale deed dated 6.8.2008 came to be executed, the same was executed in favour of M/s. Parmar Panacea Constructions and the defendant No.1 Panacea Builders is shown as a consenting party. The partners of M/s. Parmar Panacea Constructions and Panacea Builders are one and the same. Essentially the plaintiff is seeking impleadment of M/s. Parmar Panacea Constructions as a necessary party to the suit.

7. In this view of the matter, the application deserves to be allowed subject to cost of Rs.10,000/- to be paid by petitioners-plaintiffs.

8. Shri Sadavarte was gracious enough to submit that he has no objection if the cost is paid to 'Annapurna Mahila Mandal' Cosmos Bank Kothrud Branch A/c No. 004050103131, IFSC Code No.COSB00000004. Accordingly the cost to be paid within a period of two weeks from today.

9. The impugned order is set aside. The application Exhibit 86 is allowed.

10. The petition is disposed of.

(M. S. KARNIK, J.)