

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.2177 of 2018

(Smt. Suraiya Jabeen w/o Siddique Ali Khan Patel .vs. Shoeb s/o Mohammed
 Rafique Rangoonwala and another)

with

Writ Petition No.2179 of 2018

(Mohammed Abdul Wahid s/o Late Dr. Mohammad Abdul Aziz .vs. Shoeb s/o
 Mohammed Rafique Rangoonwala and another)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. Masood Shareef, Advocate for Petitioners in both writ petitions.
 Mr. V.V. Bhangde, Advocate for Respondent No.1 in both writ
 petitions.
 Mr. R.S. Sundaram, Advocate for Respondent No.2 in both writ
 petitions.

CORAM : Manish Pitale, J.

DATED : April 29, 2019.

By these two writ petitions, the petitioners have challenged identical impugned orders dated 16.02.2018 passed by Court of 10th Joint Civil Judge, Senior Division, Nagpur (Trial Court) in Exhs. 28 and 30 whereby the trial Court has rejected applications filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for being added as parties in Special Civil Suit No. 524 of 2014 filed by the respondent no.1 against respondent no.2 for specific performance of agreement dated 12.01.2012.

2. The suit property in the present case is house property which originally belonged to one Dr. Mohd. Abdul Salim, the husband of respondent no.2 in both the writ petitions. It was the case of the respondent no.2

that the suit property was given by way of gift dated 21.10.2011 in her favour by her husband, who later died on 17.11.2011. It was on this basis that the respondent no.2 claimed to be absolute owner of the suit property. As per the averments in the suit for specific performance filed by respondent no.1 against respondent no.2, an agreement to sell in respect of the suit property was executed by respondent no.2 in favour of respondent no.1 on 12.01.2012.

3. The case of the petitioners in these writ petitions is that according to them no such gift dated 21.10.2011 was ever executed in favour of the respondent no.2 by late Dr. Mohd. Abdul Salim. It was further claimed that the petitioner in Writ Petition No. 2177 of 2018, being the sister of the late Dr. Mohd. Abdul Salim, had 25 % share in the suit property and that the petitioner in Writ Petition No. 2179 of 2018, being the brother of the late Dr. Mohd. Abdul Salim, had 50% share in the suit property and that the respondent no.2, at best had a share only of 25% in the suit property as per the law of inheritance. It was pointed out on behalf of the petitioners that the petitioner in Writ Petition No. 2177 of 2018, had filed Regular Civil Suit No. 3442 of 2012 for injunction to restrain the respondent no.2 from alienating the suit property, wherein the respondent no.2 was a defendant. The petitioner in Writ Petition No. 2179 of 2018 had also filed a suit bearing Special Civil Suit No. 766 of 2012 for declaration, partition and possession in respect of the suit property, wherein a specific declaration was sought

against the aforesaid gift dated 21.10.2011. In the said suit bearing Special Civil Suit No. 766 of 2012, while initially the respondent no.1 was also made party/defendant, but when the matter came up to this Court out of an application for temporary injunction filed in the said suit, a statement was made on behalf of the petitioner in Writ Petition No. 2179 of 2018 whereby the respondent no.1 herein and other defendants were deleted from the array of defendants.

4. It was claimed that since the petitioners in these writ petitions had right, title or interest to the extent of their respective shares in the property in question, they were entitled to be added as parties to the aforesaid suit for specific performance filed by the respondent no.1 against respondent no.2. The trial Court in the impugned order has rejected the claim of the petitioners on the basis that the petitioners could have no concern with the subject matter of the suit for specific performance filed by the respondent no.1 against respondent no.2 and that since they had already raised their respective claims before the competent Civil Court, they could not be permitted to raise the same in the aforesaid suit for specific performance. The trial Court relied upon judgment of the Hon'ble Supreme Court in the case of **Kasturi .vs. Iyyamperumal** reported in **2005(3) Mh.L.J. 1**, while rejecting the applications filed on behalf of the petitioners.

5. The learned counsel appearing for the petitioners has strenuously argued that the trial Court

has committed an error in passing the impugned orders because the petitioners certainly have right, title or interest in the suit property and that they would be affected by findings that would be rendered by the trial Court in the aforesaid suit for specific performance. It was pointed out that a perusal of the plaint in the suit filed by the respondent no.1 for specific performance would show that copious references were made to the civil suits already filed in the year 2012 by the petitioners herein concerning the very same property and that the respondent no.2 had also responded to the same in her written statement, thereby showing that there were pleadings already on record concerning the rights of the petitioners. It was submitted that in these circumstances the trial Court ought to have allowed the applications filed on behalf of the petitioners in order to avoid multiplicity of litigation because even if a decree for specific performance is granted in favour of respondent no.1, the petitioners would be required to institute litigation in order to demonstrate that the decree could not be executed as against them. It was submitted that the trial Court failed to appreciate this aspect of the matter while passing the impugned orders. The learned counsel placed reliance on judgment of the Hon'ble Supreme Court in the case of **Sumtibai .vs. Paras Finance Co.** reported in **(2007) 10 Supreme Court Cases 82**, to contend that in similar circumstances the Hon'ble Supreme Court had distinguished the law laid down by its own earlier judgment in the case of **Kasturi .vs. Iyyamperumal** (supra) and that it was emphatically laid down that if

the applicants who desire to be joined as parties in a suit for specific performance, could show a fair semblance of title or interest in the suit property, their application for impleadment was required to be allowed. On this basis, the learned counsel submitted that the writ petitions deserve to be allowed.

6. On the other hand, learned counsel appearing for the respondents pointed out that the reference made to the petitioners and the suits instituted by them in the plaint and the written statement in the aforesaid suit for specific performance, was only to place all the relevant facts before the trial Court in the present case. It was submitted that the trial Court in the present case was concerned only with the question as to whether a decree for specific performance could be granted in favour of the respondent no.1 in respect of agreement dated 12.01.2012 and that the suit clearly proceeded on the basis that the respondent no.2 was the absolute owner of the suit property. It was pointed out that the question regarding the respondent no.2 being absolute owner of the suit property was not disputed in the present suit before the trial Court and in the facts and circumstances of the present case, it could not be said that the petitioners had even a semblance of title or right or interest in the suit property. It was submitted that the decree for specific performance, if at all granted by the trial Court, would be executed as against the respondent no.2 and the petitioners clearly had remedies available to them in order to ventilate their grievance, which in fact they had initiated by filing the

aforesaid suits for injunction and for declaration as well as partition and separate possession. It was pointed out that the reliance placed by the petitioners on the judgment of the Hon'ble Supreme Court in the case of **Sumtibai .vs. Paras Finance Co.**(supra) was misplaced because the facts of the said case were clearly distinguishable from those in the present case. On this basis, it was submitted that the writ petitions deserve to be dismissed.

7. Heard counsel for the parties and perused the material on record. The thrust of the submissions made on behalf of the petitioners is that in view of the serious disputes raised by them in respect of the gift dated 21.10.2011 said to have been executed in favour of respondent no.2, they clearly had passed the test laid down in the judgment in the case of **Sumtibai .vs. Paras Finance Co.** (supra) of the Hon'ble Supreme Court, wherein in paragraph 14 it was held as follows:-

"14. In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view

cannot be countenanced."

8. It was submitted that the facts of the present case were similar to those that arose before the Hon'ble Supreme Court in the case of **Sumtibai .vs. Paras Finance Co.** (supra) and that since the petitioners had indeed made out a fair semblance of title or interest in the suit property, they were required to be impleaded as parties in the suit for specific performance filed by the respondent no.1 against respondent no.2. It was submitted that the petitioners had filed suits against the respondent no.2, much prior to the suit for specific performance filed by the respondent no.1 against respondent no.2 and that the issues that were raised by them in their suits were directly concerned with the issues that would arise in the suit for specific performance filed by the respondent no.1.

9. On the other hand, reliance was placed on behalf of the respondents on the aforesaid judgment of the Hon'ble Supreme Court in the case of **Kasturi .vs. Iyyamperumal** (supra). In paragraph 15 of the said judgment, the Hon'ble Supreme Court clearly stated that the Court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff on one hand and the defendants on the other. In the present case, it is clear that in the suit for specific performance filed by the respondent no.1 against respondent no.2, the Court is concerned about the entitlement of the respondent no.1 to a

decree for specific performance of the agreement dated 12.01.2012. Although reference has been made to the suits filed by the petitioners against respondent no.2 in the plaint as well as the written statement, that in itself would not lead to the conclusion that the petitioners have made out a fair semblance of title or interest in the suit property for being impleaded as parties in the suit for specific performance filed by respondent no.1.

10. The distinguishable feature between the case before the Hon'ble Supreme Court in the case of **Sumtibai .vs. Paras Finance Co.** (supra) and the present case is that in the case before the Hon'ble Supreme Court there was a document on record to show that the property in question was not only owned by the defendant (vendor) but also his children. Therefore, there was clearly a document before the Court showing that the children of the original defendant (vendor) had a semblance of title or interest in the suit property. As opposed to the said facts, in the present case while the respondent no.2 has claimed to be the absolute owner of the suit property on the basis of gift dated 21.10.2011, the petitioners have claimed shares in the suit property on the basis of a challenge raised by them to the said gift dated 21.10.2011. Therefore, it is clear that as long as their challenge does not fructify into setting aside of the gift dated 21.10.2011, the petitioners cannot be said to have even a semblance of title or interest in the suit property.

11. It is for this reason that the trial Court in the

impugned orders has held that it is concerned with the question of grant or otherwise of decree of specific performance to the respondent no.1 herein, in respect of the agreement dated 12.01.2011 and that the issues sought to be raised by the petitioners in the present suit have been already raised by them before the competent Civil Court by filing the suits mentioned above. It cannot be said that the Trial Court has committed any grave error in reaching to the said conclusion.

12. In fact, the observations made by the Hon'ble Supreme Court and the law laid down in the case of **Kasturi .vs. Iyyamperumal** (supra) applies with full force in the present case and this Court is of the opinion that petitioners are seeking adjudication of collateral matters, which would amount to converting the present suit for specific performance of contract for sale into a complicated suit for title, which cannot be permitted. As noted above, the case before the Hon'ble Supreme Court in the case of **Sumtibai .vs. Paras Finance Co.** (supra) is clearly distinguishable from the facts of the present case. Therefore, the present writ petitions are found to be without any merits.

13. But at the same time, it would be appropriate to observe that decree for specific performance, if any, that may be granted by the trial Court in Special Civil Suit No. 524 of 2014, would obviously be subject to the result of the suits initiated by the petitioners against respondent no.2 i.e. Regular Civil Suit No. 3442 of 2012 and Special Civil Suit No. 766 of 2012. With these

observations, the present writ petitions are dismissed and the impugned orders passed by the trial Court are confirmed.

JUDGE

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