

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

WRIT PETITION NO.5259/2019
KISHOR GOPAL FULSUNGE AND OTHERS
VS.
SMT.SHITAL W/O PANKAJ AGRAWAL

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

Court's or Judge's Orders.

Shri R.V.Gaikwad, Advocate for petitioners.
Shri Gopal Sawal, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATED : DECEMBER 02, 2019.

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit 22 thereby rejecting the application preferred by the petitioner no.2 for impleading him as defendant in the suit for specific performance filed by the respondent.

In the plaint it is the case of the plaintiff that the defendant no.1-Kishor is the sole owner of the suit property which was agreed to be sold to the plaintiff. The agreements in question are dated 18.10.2010 and 17.06.2013. The petitioner no.2 who is the son of the defendant no.1 moved an application below Exhibit 22 stating therein that he had a right in the suit property since birth as he was a co-parcener and co-owner of the suit property. The trial Court has rejected the said application by observing that the petitioner no.2 was neither a necessary nor a proper party as he was claiming independent right in the suit property.

Heard Shri R.V.Gaikwad, learned counsel for the petitioners, Shri Gopal Sawal, learned counsel for the respondent and perused the pleadings. The relief sought in the suit is for

decree for specific performance of the agreements dated 18.10.2010 and 17.06.2013. According to the plaintiff, the defendant no.1 being an absolute owner of the suit property has executed those agreements. The petitioner no.2 claims coparcenary rights in that property. Since the plaintiff has claimed the relief of specific performance against the defendants, it is obvious that the decree, if passed, would be binding on the defendants who are impleaded. It is open for the applicant-petitioner no.2 to agitate his rights independently as observed by the trial Court. His presence in the suit does not appear to be necessary as the scope of the suit for specific performance cannot be expanded as sought to be claimed by the petitioner no.2. The ratio of the decision in *Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalvadiya(Deceased) through LRs & ors. 2017(4) SCC 700* does not apply to the facts of the present case.

Keeping all the rights of the petitioner no.2 open for being agitated in appropriate proceedings, there is no reason to interfere with the impugned order. The writ petition is therefore dismissed. The suit be decided on its own merits. No costs.

JUDGE

Andurkar.