

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

WRIT PETITION NO.7109 OF 2016

Sunil Sudharrao Ikhar, Ashti, Dist. Wardha

-vs-

Vinod Vitthalrao Pethe and ors.

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

Court's or Judge's Orders.

Ms Vidya Umale, Advocate for petitioner.

Shri S. D. Chopde, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : July 24, 2019

Heard finally in view of notice issued earlier.

The petitioner is the original plaintiff who has filed a suit for specific performance of an agreement dated 26/05/2010. By that agreement the respondent No.1 agreed to sell land admeasuring about 4000 sq. ft from plot No.12/5B for a consideration of Rs.1,20,000/-. In that suit for specific performance the respondent Nos.2 to 4 who are the brothers of the original defendant filed an application for being impleaded as defendants on the ground that the suit land was initially owned by their father and that all the defendants had a share therein. This application was opposed by the plaintiff but the trial Court allowed the same by passing the impugned order below Exhibit-38. Hence this writ petition.

2. On behalf of the petitioner it is submitted that since respondent Nos.2 to 4 are strangers to the contract their presence is not necessary in the suit for specific performance. The contract was entered into only with the respondent No.1 and he alone was the necessary party. The scope of the suit for specific performance

could not be expanded by directing such addition. Reliance was placed on the decision in *Kasturi vs. Iyyamperumal and ors. (2005) 6 SCC 733*. It was thus submitted that the impugned order was liable to be set aside.

3. On behalf of the respondents it is submitted that since the suit property was owned by their father all legal heirs had a share therein. The decision relied upon by the learned counsel for the petitioner was considered in the subsequent judgment and the Honourable Supreme Court in *Mumbai International Airport Private Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. (2010) 7 SCC 417* wherein it was observed that a third party cannot be impleaded if he has no semblance of title in the property in dispute. However, if some title could be shown in the suit property, such addition could be permitted. It was thus submitted that the trial Court was justified in allowing the application.

4. On hearing the learned counsel for the parties and on perusing the documents on record it is seen that according to respondent Nos.2 to 4 the suit property was allotted to their father. The original defendant is their brother. In the written statement a plea has been raised that the suit property is the property owned by the father. It is after considering all these aspects that the trial Court directed addition of the said respondents.

5. The decision in *Kasturi* (supra) has been subsequently considered by the Honourable Supreme Court in its subsequent

decision in *Mumbai International Airport Pvt. Ltd.* (supra) and it has been observed that if there is some semblance of title indicated by the party who seeks to be so added, the application can be allowed. As noted above the defendant is the brother of respondent Nos.2 to 4 and those respondents claim to have share in the suit property. In that view of the matter no fault can be found with the order passed by the trial Court permitting addition of said party.

By clarifying that suit be decided on its own merits without being influenced by any observations made in this order, the writ petitions stands dismissed with no order as to costs.

JUDGE