

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

WRIT PETITION NO.1659 OF 2019

(SACHIN ASHOK TAPDIYA...VS.. KAILASH MULCHAND CHAUDHARI & ANR.)

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

Court's or Judge's orders

Shri Vijaykumar Paliwal, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : MARCH 06, 2019.

Heard.

The plaintiff has challenged the order passed by the trial Court by which the application (Exh.28) filed by the respondent No.2 under Order I Rule 10 of the Code of Civil Procedure is allowed and the plaintiff is directed to implead the respondent No.2 as the defendant No.2 in the civil suit.

The submission on behalf of the petitioner/plaintiff is that relief is not sought against the added defendant No.2 and therefore, the Court cannot compel the plaintiff to implead him as defendant.

In paragraph No.4 of the impugned order the learned trial Judge has observed that the defendant No.1 has executed sale-deed in favour of the newly added defendant No.2, prior to filing of the civil suit and therefore, it would be in the interest of justice that the defendant No.2 is permitted to participate in the civil suit. The learned Advocate for the plaintiff has submitted that the agreement of sale was executed by the defendant No.1 in favour of the plaintiff prior

to execution of the sale-deed in favour of the newly added defendant No.2 and therefore, the plaintiff is entitled to seek decree for specific performance of contract. Whether the agreement of sale alleged to have been executed by the defendant No.1 in favour of the plaintiff is prior to execution of the sale deed in favour of the newly added defendant No.2 or not will have to be proved by the plaintiff.

In my view, in the facts of the case, the learned trial Judge has rightly allowed the application filed by the respondent No.2, as it will prevent any further complications and multiplicity of litigation. It cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

The writ petition is **dismissed**. No costs.

JUDGE