

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2382 OF 2017

Surendra Ganpati Jangam & Anr. .. Petitioners

Versus

Shivbhushan Mahadev Jangam & Anr. .. Respondents

-
- Mr. Saurabh Oka for the Petitioners
 - None for the Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 7, 2020.

P.C.:

1. The present petition has been filed assailing the order dated 18.1.2017 passed by the Civil Judge, Junior Division, Kurundwad whereby the learned Judge had allowed the application below Exh. 10 filed by respondent No. 1 and directed the petitioners to implead respondent No. 1 as a proper and necessary party in execution proceedings.

2. The facts necessary to appreciate the dispute between the parties are as under:-

2.1. The petitioners and respondent No. 2 compromised Regular Civil Suit No. 37/2014 and the learned

Judge passed the compromise order / decree dated 12.4.2014. This suit was filed by the petitioners against respondent No. 2 for injunction. Under the compromise decree, respondent No. 2 confirmed having received Rs. 35 Lacs as the total consideration in full and final settlement in respect of the suit property which was described in paragraph 1 of the suit plaint. Further, it was also recorded in the compromise order / decree that respondent No. 2 shall after completion of the formalities enter into a sale deed in order to transfer the suit property in the name of the petitioner. Lastly, respondent No. 2 was enjoined from creating third party rights or create any encumbrances in respect of the suit property. Admittedly, physical possession of the suit property was handed over to the petitioners and it continues to be so in their possession.

3. The petitioners filed execution proceedings being Execution Application No. 2/15 before the Civil Judge, Junior Division at Kurundwad. On 8.4.2015, respondent No.1 filed an application in the aforesaid execution proceedings under the provisions of Section 47 of the Code of Civil Procedure,

1908 (**“CPC”** for short) seeking impleadment of respondent No. 1 as a proper and necessary party in the execution proceedings. This application was filed on the premise and basis that respondent No. 2 had entered into a lease deed for 99 years with respondent No. 1 on 7.1.2015. A copy of unregistered lease deed dated 7.1.2015 was placed on record. The contention of respondent No. 1 before the learned Judge was that since respondent No. 2 had created third party rights in as much as by virtue of the aforesaid lease deed, in fact, sold the suit property to respondent No. 1, the respondent No. 1 was the owner of the suit property. Therefore, in the execution proceedings filed by the petitioners, respondent No. 1 ought to be a proper and necessary party.

4. Pursuant to the orders passed earlier, respondent No. 1 has been served. In so far as respondent No. 2 is concerned, there is a remark that he is not found at the given address and nobody knows where he is. This remark has been inserted on 27.6.2018.

5. Be that as it may, in order to decide the present petition which has remained pending since 2017, the effect of service on respondent No. 1 is good enough. Today, none appears for respondent No. 1.

6. Heard Mr. Saurabh Oka, learned counsel appearing for the petitioners and perused the pleadings which are annexed to the petition, as also the impugned order. Mr. Oka submits that under the provisions of Section 47 of the CPC, the statutory right of impleadment of a party is only that of the party / parties who were present before the Court of original jurisdiction which decided the dispute between the parties. He submits that in so far as the dispute between the petitioners and respondent No. 2 is concerned i.e Regular Civil Suit No. 37/2014, the same was compromised between the parties and the compromise decree has effectively settled and crystallized rights between the parties. He submits that under the compromise decree, it was recorded that respondent No.2 received Rs. 35 Lacs from the petitioners and the petitioners in lieu of this consideration of Rs. 35 Lacs received juridical possession of the suit property.

He submits that in view of the provision of Section 47 of the CPC, in so far as respondent No. 1 is concerned, he cannot be admitted to be a proper and necessary party in the facts of the present case. He submitted that respondent No. 2 breached the provision of Clause (4) of the compromise decree in as much as he created third party rights in the suit property after the passing of the decree and if the pleadings of respondent No. 1 are to be believed, respondent No. 1 received another sum of Rs. 35 Lacs and has vanished.

7. I have considered the pleadings and the reasons given in the impugned order. In so far as the provisions of Section 47 are concerned, the same are clear in terms of its applicability and therefore, it does not require any further interpretation. The applicant before the execution Court i.e respondent No. 1 was never a party in the Regular Civil Suit proceedings and therefore it is trite clear that respondent No. 1 has no locus for seeking impleadment in the execution proceedings as has been done. The impugned order dated 18.1.2017 at Exh. E to the petition is, therefore, incorrectly passed on the applicability of the provisions of Section 47 of

CPC. In so far as respondent No. 1 is concerned, he may avail of his statutory rights of taking out appropriate and proper proceedings in accordance with law and as advised before the appropriate Court / forum in view of the document of lease deed dated 7.1.2015 as against respondent No. 2 and or in respect of the suit property. In so far as impleadment in the execution proceedings is concerned, the same has been incorrectly done and is contrary to the provisions of Section 47 of CPC.

8. In view of the above, the petition is allowed. The impugned order dated 18.1.2017 is quashed and set aside.

No order as to costs

9. The petition is disposed of in the above terms.

[MILIND N. JADHAV, J.]