

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8287 OF 2013

Sarsenapati Santaji Ghorpade Sugar Factory Pvt. Ltd. .Petitioner

Vs.

Maruti Dinkar Patil & ors. .Respondents

Mr. S. S. Patwardhan, Advocate, for the Petitioner
Mr. Vaibhav Sugdare a/w Ms Prachi Tatake, Advocate, for the
Respondent Nos. 1 & 2

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2020

P. C.

. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

3. By this Petition, the Petitioner has impugned the order dated 16.07.2013 passed by the learned C. J. J. D., Kagal, Kolhapur below Exh. 28 in R. C. S. No. 86 of 2011, by which the Respondent Nos. 1 & 2's Application under O. 6, Rule 17 of the Code of Civil Procedure (for short "C. P. C.") was rejected as well as the order dated 16.07.2013 passed below Exh. 29 in the same suit, by which the Petitioner's Application under O. 1, Rule 10 of the C. P. C. was allowed subject to payment of costs.

4. Learned counsel for the Petitioner submits that the impugned orders dated 16.07.2013 passed below Exh. Nos. 28 & 29 are unsustainable in law. He submits that there was no justification for the learned trial Judge to allow the amendment, which changes the nature of the suit and neither was there any justification for the learned Judge to allow the Central and State authorities to be made proposed Defendants in the suit. He submitted that neither is the amendment nor the proposed Respondents necessary for determining the real issue in the subject suit. He submits that the statutory authorities ought not to have been dragged in the suit, inasmuch, as the suit is for declaration that the Sale Deed dated 09.06.2011 executed between the Petitioner and the Respondent No. 3 does not bind the Respondent Nos. 1 & 2's shares in the suit property.

5. Learned counsel for the Respondent Nos. 1 & 2 opposes the Petition. It is submitted that no interference was warranted in the impugned orders both dated 16.07.2013 passed below Exhs. 28 & 29. It is submitted that the said amendment is necessary, inasmuch as, permissions were obtained by the Petitioner (Original Defendant No. 1) to start a factory, after making false representations to the State and Central Authorities. It is submitted that the said amendment is necessary to avoid multiplicity of cases and that the proposed Respondents are

also necessary and proper parties to the said suit.

6. Perused the papers. The Petitioner is the Original Defendant No. 1 and the Respondent Nos. 1 & 2 are the Original Plaintiffs. The Respondent No. 3 (Original Defendant No. 2) is the father of the Respondent Nos. 1 & 2 and is stated to be the karta of the joint family. It appears that the Respondent No. 3 sold his share in the land i. e. in Gat No. 466 to the Petitioner, pursuant to which, the Petitioner constructed a sugar factory on the adjacent land. Pursuant thereto, the Respondent Nos. 1 & 2 filed a Civil Suit, being R. C. S. No. 86 of 2011 in the Court of the learned C. J. J. D., Kagal, Kolhapur and prayed for a declaration that the Sale Deed dated 09.06.2011 executed by the Respondent No. 3 (Original Defendant No. 2) in favour of the Petitioner (Original Defendant No. 1) does not bind their shares in the suit property. The Respondent Nos. 1 & 2 (the Original Plaintiffs) also prayed for a decree of perpetual injunction seeking to restrain the Petitioner from interfering with their alleged possession in their capacity as co-parceners over the suit land. The Petitioner appeared in the said suit and filed his Written Statement. In the said Written Statement, the Petitioner contended that the Sale Deed which was executed by the Respondent No. 3 in their favour in his capacity as the karta of the Respondents' joint family property and for legal necessity. The Respondent No. 3 also appeared in the said suit and filed his Written

Statement. According to the Respondent No. 3, he had handed over possession of the said suit property to the Petitioner, pursuant to the Sale Deed. It appears that after the Written Statements were filed, the Respondent Nos. 1 & 2 filed two Applications i. e. Exhs. 28 & 29 on 07.01.2013. The Application (Exh. 28) was an Application filed under O. VI, Rule 7 of the C. P. C., by which the Respondent Nos. 1 & 2 sought amendment of the plaint and sought certain additional reliefs. According to the Respondent Nos. 1 & 2, the proposed amendment was necessary for determining the real controversy between the parties. According to the Respondent Nos. 1 & 2 , certain permissions were sought by the Petitioner on the basis of the Sale Deed i. e. permissions from the State of Maharashtra, the Maharashtra Pollution Control Board, Director of Survey, Commissioner of Sugar, Maharashtra State, Pune and Ministry of Food and Civil Supplies, Union of India. The Respondent Nos. 1 & 2 contended that the permissions given by the said Authorities were not binding on the Plaintiffs. The second Application (Exh. 29) was filed by the Respondent Nos. 1 & 2 for bringing on record five additional Defendants i. e. the State of Maharashtra, the Maharashtra Pollution Control Board, Director of Survey, Commissioner of Sugar, Maharashtra State, Pune and Ministry of Food and Civil Supplies, Union of India. According to the Respondent Nos. 1 & 2, the said proposed Defendants were necessary parties to the suit having regard to the controversy involved in the said suit. Both the said

Applications i. e. Exhs. 28 & 29 were allowed by the learned C. J. S. D., Kagal, Kolhapur by passing two separate orders on the same day i. e. 16.07.2013.

7. On 27.01.2014, this Court issued notices to the Respondents returnable on 24.02.2014 and the impugned orders were stayed. Pursuant to the said notices, Mr. Vaibhav Sugdare, Advocate filed his Vakalatnama on behalf of the Respondent Nos. 1 & 2. From the bailiffs report, it appears that the Respondent No. 3 has been served, however, despite service has not appeared. As noted above, the Respondent No. 3 is the father of the Respondent Nos. 1 & 2. The Respondent Nos. 1 & 2 have filed a Civil Suit, being R. C. S. No. 86 of 2011 as against the Respondent No. 3 i. e. their father and the Petitioner and have prayed for a declaration that the Sale Deed dated 09.06.2011 executed by the Respondent No. 3 in favour of the Petitioner does not bind them, in their shares in the suit property. In the said suit, decree of perpetual injunction was also sought. By the proposed amendments, the Respondents intended to bring on record the authorities, who had granted permissions to the Petitioner for starting a sugar factory, allegedly on the basis of the Sale Deed executed by the Respondent No. 3 in favour of the Petitioner. The amendments sought in Exhs. 28 & 29 are not germane for deciding the suit filed by the Respondent Nos. 1 & 2 as against the Petitioner and the Respondent No. 3. The said proposed

Respondents are neither necessary nor proper parties warranting their impleadment in the said suit. It is always open for the Respondent Nos. 1 & 2 to take out appropriate proceedings before the appropriate authority with respect to the permissions granted by the State and Central authorities or adopt any other remedy. The proposed amendment is not germane to the suit filed by the Respondent Nos. 1 & 2 as against the Petitioner and the Respondent No. 3 i. e. for cancellation of the Sale Deed and for a declaration that the Sale Deed does not bind the (Plaintiffs) in their shares in the suit property.

8. For the reasons stated aforesaid, the impugned orders dated 16.07.2013 passed by the learned C. J. J. D., Kagal, Kolhapur below Exhs. 28 & 29 in R. C. S. No. 86 of 2011 cannot be sustained and as such, are quashed and set aside. Needless to state, that the Respondent Nos. 1 & 2 are at liberty to agitate their grievances with respect to permissions granted to the Petitioner before the appropriate forum / authority.

9. Rule is made absolute in terms of prayer clauses (A) to (D).

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)