

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2151 OF 2019

SUDHIR S/O HARIBHAU BABAR
VERSUS
ANIRUDDHA S/O RAMDAS BAIRAGI AND OTHERS

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Advocate for the Petitioner : Mr. D. A. Mane h/f
Mr. P. A. Bharat

Advocate for Respondent Nos. 1 & 2 : Mr. V. B. Jagtap
Advocate for Respondent Nos. 3 to 6 : Mr. Y. V. Kakade

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CORAM : V. K. JADHAV, J.
DATED : 28TH JANUARY, 2021

PER COURT :-

1. Heard finally with consent at admission stage.
2. The petitioner is the original plaintiff. The petitioner has instituted a suit bearing Special Civil Suit No. 89 of 2016 for specific performance of contract. In the pending suit, respondent nos. 3 to 6 herein have filed an application Exhibit 30 under Order I Rule 10 of the Civil Procedure Code for impleading them as party defendants in the suit. The learned 10th Joint Civil Judge Senior Division, Ahmednagar, by order dated 22.01.2019 below Exhibit 30 in Special Civil

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Suit No. 89 of 2016, allowed the said application directing to add respondent nos. 3 to 6 herein as party defendants in the suit. Hence this Writ Petition.

3. Learned counsel for the petitioner submits that the petitioner/plaintiff has instituted the suit for specific performance of contract and as such, respondent nos. 3 to 6 herein are neither necessary nor proper parties to the suit. The petitioner-plaintiff is the master of the suit and considering the prayer in the suit about specific performance of contract, the parties to the contract can only be the parties to the suit.

4. Learned counsel for the petitioner further submits that respondent nos. 3 to 6 have instituted Regular Civil Suit No. 17 of 2012 before learned Civil Judge Junior Division, Shevgaon and the Principal District Judge, Ahmednagar has transferred the said suit from the files of Civil Judge Junior Division, Shevgaon to the court of Civil Judge Senior Division, Ahmednagar with a direction to club Regular Civil

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Suit no. 17 of 2012 with Special Civil Suit No. 89 of 2016 and decide the two suits simultaneously in order to avoid conflicting decisions. Learned counsel submits that thus the application moved below Exhibit 30 at belated stage was not at all maintainable. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance in a case ***Mulchand K. Ranka and Another v. Hitesh C. Jhaveri and Others***, reported in **2012 (3) Bom. C.R. 33**.

5. Learned counsel for respondent Nos. 3 to 6 submits that respondent nos. 3 to 6 have instituted Regular Civil Suit No. 17 of 2012 in respect of the same suit property for declaration, partition and separate possession along with a decree of perpetual injunction against the present petitioner and the respondents/original defendants. Learned counsel submit that in the said suit, a prayer is also made in respect of an agreement to sale to be declared as not binding on respondent nos. 3 to 6. Learned counsel submits that the ratio laid down by three Judges Bench in the case of ***Kasturi v. Iyyamperumal and Others***, reported in **(2005) 6 SCC 733**

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is distinguished in the case *Sumtibai and Others v. Paras Finance Co., Rg. Partnership Firm Beawer (Raj.) Through Mankanwar w/o Parasmal Chordia (Dead) & Others*, reported in AIR 2007 SC 3166, and it is held that the decision in *Kasturi's* case (supra) can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. In the instant case, respondent nos. 3 to 6 have *prima facie* shown the semblance of title or interest and they can certainly file an application for impleadment.

6. I have also heard learned counsel for respondent nos. 1 and 2.

7. The petitioner-plaintiff has instituted the suit for specific performance of contract in respect of land gat no. 119 to the extent of 1 H. 78 R. It has been specifically pleaded in the said suit that the suit land was standing in the name of deceased Godabai Pandu Sable and after her death the said land was transferred in the name of Mandakini

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Bhujang Pawar, Mangala Bhujang Pawar and Sunanda Bhujang Pawar respectively. Said Mangala Bhujang Pawar was married to respondent/defendant no.2 Ramdas and defendant no.1 is her son. After death of Mangala, the said agricultural land was mutated in the name of defendant nos. 1 and 2. Thereafter, the other two sisters Mandakini and Sunanda, on 25.11.2008, executed a deed of relinquishment in respect of the said property in favour of defendant nos.1 & 2. Thus, defendant nos. 1 and 2 became the exclusive owners in possession of the suit property. It has been further pleaded that those defendants have executed *isar pavti* in respect of the said suit property, however, failed to execute the sale deed even accepting the part payment. Thus, the suit for specific performance came to be instituted.

8. Respondent no.3 Sundrabai, along with respondent nos. 4 to 6, claims her share in the suit property and there are specific allegations that the petitioner and defendant nos. 1 and 2, in collusion, got executed the agreement to sale in respect of the suit property. The petitioner is an estate

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agent indulged in the business of purchasing and selling of the agricultural land.

9. In the backdrop of these pleadings, the ratio laid down in the case of *Sumtibai* (surpa) is expressly applicable to the facts and circumstances of the present case. The Supreme Court, in para 14 of the judgment, has made the following observations:

“14. In view of the aforesaid decisions we are of the opinion that Kasturi’s case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

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10. In the instant case, respondent nos. 3 to 6 have shown a fair semblance of title or interest. Thus, I find no fault in the impugned order passed by the trial court allowing the application Exhibit 30. There is no substance in the Writ Petition. The Writ Petition is therefore dismissed.

(V. K. JADHAV, J.)