

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6111 OF 2012

Raju Bhivsen Targhale

... Petitioner

Versus

Haji Shaikh Azim Haji Fatte Mohammad
and others

... Respondents

....

Mr. A. S. Bajaj, Advocate for the petitioner

Mr. P. S. Pawar, Advocate for respondent Nos. 1 and 2

....

CORAM : R. G. AVACHAT, J.

DATED : 08th FEBRUARY, 2021

PER COURT :-

. Heard.

2. The challenge in this writ petition is to the order dated 21.06.2012 passed by the 6th Joint Civil Judge, Senior Division, Aurangabad, in Special Civil Suit No.388 of 2011. By the impugned order, the application preferred by the petitioner for impleading him and others as necessary parties to the suit, came to be rejected. The petitioner is therefore before this Court.

3. It is the suit for specific performance of agreement for sale of land, particularly described in para 1 of the plaint. The petitioner herein is a son of original defendant No.1 (since deceased). The petitioner's father allegedly executed "Isar Pavti" / "Kararnama" (agreement for sale) in favour of the plaintiff on 07.10.2010. The specific performance of which is sought for in the suit is the said agreement for sale dated 07.10.2010. The petitioner preferred the application for impleadment as a defendant in the suit on the ground that he himself and others named in the application are the co-owners of the suit land. It has been averred in the application that the petitioner's great grandfather - Vithoba was cultivating the land Survey No.1, admeasuring 7 Acres 20 Gunthas as tenant and on his demise the applicant's grandfather – Punjaji, started cultivating the said land. Thus, the suit land is the ancestral property of the petitioner, his deceased father and others, named in the application. According to the petitioner, if they are not allowed to be joined as defendants in the suit, it may affect their interest.

4. The learned Civil Judge, Senior Division, rejected the application on the ground that the petitioner's father – Bhivsen was

alone tenant of the suit land. Consequently, the Competent Authority issued certificate under Section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act (H.T.A.L. Act), in Bhivsen's favour. Before the competent authority, the brothers and sisters of Bhivsen, claimed right, title and interest in the suit land being legal heirs of Punjaji. The Competent Authority, specifically answered the issue that Bhivsen alone was tenant of the suit land. The petitioner and others have no right or interest over the suit property. Moreover, they are not parties to the agreement for sale.

5. Learned Advocate for the contesting respondent supports the impugned order. According to him, pending the suit, Bhivsen has passed away. His legal heirs including the petitioner would be brought on record of the suit. The petitioner would, therefore, have an opportunity to contest the suit. Learned Advocate, therefore, urged for dismissal of the writ petition.

6. True, in a suit for specific performance of contract, the parties thereto, may only be necessary parties to the suit. In the case of *Sumtibai and others vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Through Mankanwar (Smt) w/o Parasmal Chordia (Dead) and others* – reported in *(2007) 10 SCC 82*, it has been

observed thus:

“Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi v. Jyyamperumal. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision 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. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.”

7. The petitioner has also relied on a judgment of this Court in the case of ***Tilottama and Ors. vs. Suhas and Ors.*** (Writ Petition No.450 of 2019 – Nagpur Bench). The facts of this case (Tilottama) indicate that the petitioner therein had filed application for impleadment in the suit on the ground that he

was a son of defendant No.1. The suit property was ancestral property and without consent of the family members, defendant No.1 had alienated the said property. The Court relying on *Sumtibai's case (supra)*, allowed application Exh.43.

8. A copy of the agreement for sale is on record. It has been specifically mentioned therein that great grandfather of the original defendant No.1 was tenant in possession of the suit land. On his demise, the grandfather and then the original defendant's father were cultivating the suit land as tenant. These averments in the agreement are *prima facie* sufficient to support the claim of the petitioner that the suit land is the ancestral property. Learned Civil Judge appears to have not perused the document of agreement for sale. It was impressed by ownership certificate issued under Section 38(6) of the H.T.A.L. Act.

9. The averments made in the application coupled with the recitals in the agreement for sale suggest the petitioner and others to have a semblance of title in respect of the suit land. Thus, they become proper party to the suit. The learned Civil Judge ought to have allowed the application. Interference, therefore, is called for with the impugned order.

10. The writ petition, thus, succeeds. The order impugned in this writ petition is set aside. The application moved by the petitioner for impleadment as party defendants to the suit, is allowed. The observations made hereinabove are *prima-facie* in nature.

11. The writ petition is disposed of accordingly.

[R. G. AVACHAT, J.]

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