

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.559 OF 2020
IN
SECOND APPEAL NO.153 OF 2007

Yeshwant s/o Trimbakrao Deshpande

... Applicant

Versus

1. Trimbak s/o Narharrao Deshpande
2. Sow. Thakubai w/o Baliram Pandhavale

... Respondents

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Mr. R. K. Ashtekar, Advocate for applicant.

Mr. C. R. Deshpande, Advocate for respondent No.1.

Mr. M. B. Kolpe, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 04.03.2021

Pronounced on : 08.06.2021

ORDER :-

. Present application appears to have been filed under Order 1 Rule 10 of Civil Procedure Code for addition of the applicant as party respondent in Second Appeal.

2. Heard learned Advocate Mr. R. K. Ashtekar for the applicant, learned Advocate Mr. C. R. Deshpande for respondent No.1 and learned Advocate Mr. M. B. Kolpe for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the applicant is the son of present respondent No.1 in this application,

who is the original appellant in Second Appeal. Suit land Survey No.112 admeasuring 2 Acres 34 Gunthas situated in village Deolali, Dist. Osmanabad is the ancestral property of the applicant and it stands in the name of respondent No.1 as Karta of the joint Hindu family. The applicant was in Military service till 2003, thereafter he was working with Reliance Group at Latur till 2007 and thereafter, he has joined service with M.S.R.T.C. on 21.05.2017. Applicant had no knowledge about the execution of any agreement by his father in favour of respondent No.2. The remaining land was acquired by the State Government for Deolali Medium Project and the compensation of the said land was received in the year 2017. At that time, the applicant had asked respondent No.1 to give share in the compensation as well as remaining land to him, but at that time, he was told about the said agreement and the litigation. He, thereafter, collected the documents and came to know about the pendency of the Second Appeal. The applicant has share in the suit property and, therefore, he is a necessary party to the proceedings. His father, without his consent and without any legal necessity, had executed the agreement in favour of respondent No.2. Now, it appears that respondent No.1 will not be protecting the interest of present applicant and, therefore, he deserves to be added as respondent in Second Appeal. Learned Advocate for the applicant has

thereafter taken this Court through the documents, which have been produced by the applicant showing his retirement and subsequent service he had undertaken till 2007. The group of First Appeals i.e. First Appeal No.861 of 2007 with Cross Objection (ST.) No.16407 of 2007 were decided by this Court on 22.03.2017 and the copy of the said judgment has been produced to support the contention that after this judgment was pronounced, the enhancement in the compensation was received, after which he had demanded his share from his father. There is absolutely no delay in coming to this Court. When his interest and share in the property needs to be protected, he deserves to be added as necessary party to the proceedings.

4. Per contra, the learned Advocate representing respondent No.2, after taking this Court through the affidavit-in-reply filed by respondent No.2, further submitted that in fact when the suit was filed by her for specific performance of the contract and present respondent No.1 who was the original defendant filed written statement, he had specifically contended that he is the only owner of the property who had received it in the partition between him, his father and brother. The first appeal filed by respondent No.1 came to be dismissed on 15.12.2006 and even thereafter, there was no attempt on the part of the present applicant either during the pendency of the first appeal or immediately thereafter

to get himself added as party respondent by showing whatever reason he wants to show it now. Now, it appears that the present application has been filed in collusion between the applicant and respondent No.1 when they want to create multiplicity of the litigation. The applicant has no title to the suit property. Further, when the property in dispute was received by respondent No.1 in partition, it became the exclusive property of respondent No.1 which he had agreed to sell to respondent No.2 and, therefore, the applicant cannot be said to be the necessary party to the litigation.

5. Perusal of the record would show that present respondent No.2 i.e. original plaintiff had filed Regular Civil Suit No.117 of 1994 before learned Joint Civil Judge Junior Division, Osmanabad for specific performance of the contract dated 04.09.1991 in respect of land Survey No.112 to the extent of 2 Acres 34 Gunthas situated in village Deolali, Tq. and Dist. Osmanabad. The said suit came to be decreed on 05.08.2002. Thereafter, present respondent No.1 – original defendant filed Regular Civil Appeal No.148 of 2002 before the District Court, Osmanabad. It was heard by learned Ad-hoc District Judge, Osmanabad and was dismissed on 15.12.2006. Thereafter, he has filed the present Second Appeal. It has been admitted on 31.07.2007 on following question of law.

“ Whether in the facts and circumstances of the present case, despite non-examination of the plaintiff herself in the Court, it was legal and proper for the Courts below to infer her readiness and willingness to perform her part of the agreement throughout the relevant period and whether the examination of the power of attorney could substitute the requirement to prove the readiness and willingness as needed under Section 16(C) of the Specific Relief Act ?”

6. If we peruse the memo of Second Appeal, it can be seen that absolutely no substantial question of law on the point that the suit was not maintainable for nonjoinder of necessary party was ever taken by respondent No.1. Perusal of the written statement would show that the contents of paragraph No.3 of the suit/plaint have been admitted in clear terms. In paragraph No.3 of the suit, the original plaintiff, after giving the description of the suit land, has stated that the said land was owned and possessed by the defendant and the land was allotted to the share of the defendant during partition which was effected in between defendant and his brothers and father. The name of the defendant is recorded as occupant and owner of the suit property. Therefore, when the defendant had put forward and admitted the case that it was his exclusive property after the partition between him and co-parceners, the suit had proceeded. Neither in the written statement nor at any time

thereafter any such point was raised and there was no attempt on the part of the original defendant to get specific issue framed to that extent. Even in the appeal memo before the First Appellate Court, no such point was raised, nor by way of separate application it was ever tried to be raised. Even before that, during the testimony, the defendant has not made any such statement stating that, his son is a co-parcener or co-sharer in the said property. Now, except his own service record, there is nothing which has been produced by the present applicant. In this application also, he is not denying the fact that his father had received the said property during the partition of the ancestral lands between his father and grandfather as well as uncle. Under such circumstance, it cannot be said that the present applicant is a necessary party to the proceedings.

7. Another fact which is indigestible is about the claim of the applicant that he had absolutely no knowledge about the litigation. He has not come with the case that he had strained relationship with his father since prior to 1994 i.e. the institution of the suit by respondent No.2 against his father. It is also not his case that he never visited his native place as well as the place where the father was staying during all those years till he was discharged from his Military service and even till 2017. It is hard to believe that the father would not have disclosed him

about the litigation he is facing. The application is not filed with *bona fide* intention. Taking into consideration the concurrent finding, it appears that this is an attempt to create multiplicity in the litigation and, therefore, the application deserves to be rejected. Accordingly, it is rejected with cost.

[SMT. VIBHA KANKANWADI, J.]

scm