

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

WRIT PETITION NO.12758 OF 2018

Amirkhan Ahmedkhan Pathan	... Petitioner
Versus	
Anita Arunrao Jadhav and others	... Respondents

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Mr. A. R. Devakate, Advocate for petitioner
Mr. N. S. Tekale, Advocate for respondent No.1
Mr. K. R. Doke, Advocate for respondent Nos. 2 to 19

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CORAM : R. G. AVACHAT, J.

DATED : 04th FEBRUARY, 2021

PER COURT :-

. Heard.

2. The challenge in this writ petition is to the order dated 21.09.2018 passed by the Court of Joint Civil Judge, Senior Division, Bhoom, below Exh.107 in Regular Civil Suit No.15 of 1970. By the impugned order, the application moved by respondent No.1 for his impleadment as a defendant in the suit, came to be allowed. The petitioner (Original plaintiff No.2), has therefore, preferred this writ petition against the said order.

3. Shri A. R. Devakate, learned Advocate for the petitioner would submit that the suit dates back to 1967. It has been filed for injunction simpliciter. The learned Judge framed the issue as regards tenancy and referred it to a competent authority for finding thereon. The petitioner has been held to be a tenant in the suit land. A compromise has been arrived at between the plaintiff and the original defendants. A compromise *pursis* was therefore preferred before the trial Court on 11.09.2018. On the same day, respondent No.1 filed application Exh.107 for impleadment as a defendant in the suit. The trial Court allowed the said application. According to the learned Advocate, respondent No.1 claimed to have purchased the suit land way back in 2004. After over 14 years, he sought for impleadment in the suit. The petitioner, being the plaintiff, has choice as to person against whom he shall proceed. Learned Advocate has relied on the judgment of the Apex Court in the case of *Vidur Impex and Traders Private Limited and others vs. Tosh Apartments Private Limited and others* reported in (2012) 8 SCC 384 and the Judgment of this Court in the case of *Sandeep Ramesh Solanki and others vs. Sou. Shevanti Dadoba Nashte* reported in (2019) AIR Bom R 427. Learned Advocate ultimately urged for allowing the writ petition.

4. Shri N. S. Tekale, learned Advocate for respondent No.1 would, on the other hand, submit that in view of principle of *lis pendens*, respondent No.1 would be bound by a decree that may be passed in the suit. The original defendant No.1 after having sold the suit land to respondent No.1, has joined hands with the plaintiff/petitioner and arrived at a compromise. The original defendant has admitted the plaintiffs claim in the suit. The same is necessarily prejudicial to the interest of respondent No.1. The trial Court has rightly allowed the application. He, therefore, urged for dismissal of the writ petition.

5. Order 1 Rule 10(2) of the Code of Civil Procedure reads thus:

“(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

6. The petitioner/plaintiff filed the suit for perpetual injunction. It is his claim that the suit land has been possessed by

him as a tenant. Finding on the issue of his tenancy claim has been answered in affirmative. Pending the suit, the original defendant No.1 (owner of the suit land) and her two sisters have transferred the suit land by way of sale in favour of respondent No.1 way back in 2004. There is *prima-facie* nothing to indicate the respondent No.1 to have knowledge of the pendency of the suit. Pending the suit, the plaintiff and the defendants have arrived at a compromise. In view of the terms of the compromise, the defendants including the vendor of the defendant No.1 admitted the plaintiffs' claim of being in possession of the suit land as a tenant. This is nothing but collusion between the plaintiff and defendant No.1.

Section 52 of the Transfer of Property Act speaks of *lis pendens* . A transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit.

7. The cases referred in the case of ***Sandeep Ramesh Solanki (supra)***, it is held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer.

Sometimes, a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored.

8. In *Vidur Impex and Traders Private Limited (supra)* the Apex Court has given circumstances under which a person may be joined as a party to the suit, those are as under:

“41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against who a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit

property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

9. Keeping all the legal proposition in mind, the issue needs to be answered in the light of facts and circumstances of the case. In the case in hand, the suit has been compromised between the plaintiff and the defendants. Pending the suit, defendant No.1 transferred the suit land to the respondent No.1. Thereafter, defendant No.1 admitted the plaintiffs' claim made in the suit. It is nothing but a collusion between the plaintiff (petitioner) and the original defendant No.1. Respondent No.1, who claims through defendant No.1, if not allowed to join as a party to the suit, may be bound by the outcome of the suit. The compromise arrived at, is prejudicial to the interest of respondent No.1. The trial Court has rightly allowed application for impleading her as party defendant.

10. I find no jurisdictional error in the impugned order. No interference is therefore warranted with the impugned order. The writ petition fails. The same is dismissed.

[R. G. AVACHAT, J.]