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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT Petition NO. 11383 OF 2019

Durrat Raj Kotak and another

....Petitioners

V/s.

Dhyaan Shyam Kotak and Others

.....Respondents

Mr. Mayank Ratnaparkhe a/w Aashdin Chivalwala i/b Argus Partners

Mr. Surel S. Shah i/b Mr. Prashant Darandale for Respondent nos. 1, 7 & 8

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 26, 2021.

P.C.:

1] This Petition is by Plaintiff in Special Civil Suit No. 1041 of 2014 questioning the order dated 17th November 2018 passed below Exhibit 104 whereby prayer of the Defendant No. 1 as Plaintiff came to be allowed.

2] Facts necessary for deciding the issue involved in the Petition are as under.

3] Petitioners filed Suit seeking declaration to the effect that gift deeds/conveyance deed executed by Respondent No. 2 in favour of Defendant No.s 3, 4, 5 and 6 were illegal, null and void.

4] It is the case of the Respondent No. 1 that during pendency of the Suit, Respondent No. 8 vide gift deed dated 16/10/2014 gifted 25% of her share in the Suit property to Respondent No. 1 which has prompted him to be impleaded as Plaintiff to the Suit.

5] It is the case of the Petitioner that Respondent No. 2 was original owner of the Suit property and as such on 24th March 2014, gifted undivided share including right title and interest in entire Suit property to the Plaintiffs and Respondent Nos. 7 and 8. The said gift deed was registered in the office of Sub-Registrar Vadgaon, Maval. It is also claimed that on 28th June 2014, 22nd July 2014, 23rd July 2014 Respondent No. 2 gifted property described in para 2B and 2C in favour of Respondent Nos. 4, 5 and 6 by registered deed. On 23rd July 2014 also, aforesaid gift deed of 24th March 2014 whereby gift of

undivided share in favour of the Plaintiff and Respondent Nos. 7 and 8 came to be registered.

6] The aforesaid gift deeds are subject matter of challenge in the Suit.

7] Respondent No. 3 to the present Petition filed an Application seeking order from the Court restraining Respondent No. 8 from executing any transfer deed where an injunction was ordered on 18th of October 2014.

8] In the backdrop of aforesaid developments, it is the case of the Petitioner that on 10th June 2017, Application Exhibit 104 based on title to the extent of 25% of the Suit property by virtue of gift deed executed by Respondent No. 8, came to be filed which is allowed by the impugned order.

9] According to learned counsel, Plaintiffs-Petitioners are masters

of the litigation and that being so, courts cannot thrust upon Petitioners-Plaintiffs to implead third party as Plaintiff to that Suit. According to Petitioner, there is likely to be conflict between Plaintiff and the person who claim to be added as Plaintiff. In that view of the matter, application ought not to have been allowed nearly on the ground that there is a gift deed thereby gifting 25% share in favour of Respondent No. 1. According to him, once the Petitioners have disputed the right of Respondent No. 1, at the most he can be added as a Respondent.

10] Respondent has placed reliance upon judgement of this court in the matter of **Kamlabai W/o Ishwar Pujari and others Vs. Shantirai W/o Lalitmohan Rai and others**¹ so as to claim that if the party who is sought to be impleaded as Plaintiff has common interest, provisions of Order I Rule 1 of Code of Civil Procedure, 1908 can be invoked. It is further claimed that parties might settle their Suit in absence of Respondent No. 1 thereby practicing fraud and that being so, it is necessary for him to be party to the Suit.

¹ [1983] Mh.L.J. 221]

11] Considered the rival submissions.

12] I was of the view that Plaintiff cannot be thrust with impleadment of Respondent No. 1 as co-Plaintiff, particularly when the co-Plaintiff merely because he has 25% share in the Suit property.

13] Share of the Respondent No. 1 to the extent of 25% is based on gift deed dated 24th March 2014 perhaps after the Suit was initiated.

14] Apart from above, interest of the Respondent No. 1 i.e. Applicant to Exhibit 104 can be safeguarded by directing his impleadment as Defendant to the Suit, which he may if so desire, support the case of the Plaintiff.

15] In that view of the matter, order passed below Exhibit 104 is hereby modified.

16] Respondent No. 1 to the Petition who is Applicant to Exhibit 104 is directed to be impleaded as Defendant to the Suit.

17] Petition stands disposed of in the above terms.

[NITIN W. SAMBRE, J.]