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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4878 OF 2021**

Javed Khan Mustaq Khan
partner of M/s Modern Construction
and Developers

Since deceased Through Legal Heirs

a) Rizwana Javed Khan and Ors

..... Petitioners.

V/s

Noor Mohammed Yasin Ghone
and Others

.....Respondents

Mr. Vaibhav D. Kadam for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 31, 2021

P.C.:-

1] Vide impugned order dated 9th November, 2020, Defendant No.4 is permitted to be added in the suit. This Petition is by the Defendant questioning the same on the grounds viz (a) earlier attempt for impleadment was rejected on 28/3/2016, (b) applicant was not impleaded as party non-applicant to the Chamber Summons, (c) impleadment is permitted at the fag end of the suit proceedings and (d) party impleaded has no dispute with the Petitioner/Defendant and Respondents/Plaintiffs.

2] Considered aforesaid submissions.

3] While dealing with aforesaid four contentions, Trial Court was sensitive to the rejection of earlier Chamber Summons No. 249 of 2016, as proposed Defendant No.4 specifically pleaded about the same. Apart from above, there appears to be another suit between the parties being Suit No.2733 of 2008 in which consent terms were tendered on 7th July, 2017. In suit No.2485 of 2007 also consent terms were executed by the brother of the plaintiff and that suit was disposed of. Revenue entries based on consent terms appears to be foundation for Defendant No.4 to make application for impleadment on the theory that he has acquired titled to the property.

4] Apart from above, fact remains that Trial Court was sensitive to the fact about passing of the order, thereby rejecting prayer for impleadment on earlier occasion. However, aforesaid subsequent developments of 2017 and 2019 are relied on for considering change in the circumstances.

5] There is one more facet. Plaintiff has not question the order impugned whereas Defendant has questioned the same on the ground that Defendant No.4 is not a necessary party. Plaintiff is a *dominus litis*. It is for him to decide who is to be added as party to the suit. As such, in the absence of any prejudice to the Petitioner/Defendant, it cannot be inferred that order impugned is illegal.

6] Even if there is consent decree inter se between the Plaintiff and Defendant No.4, Petitioner/Defendant being not party to the same, it cannot bound the Petitioner. As such, it is always open for the Petitioner to question the binding effect of the said consent decree passed in various suits at appropriate stage of the proceedings.

7] In that view of the matter, I hardly see any irregularity in the order impugned. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)