

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3380 OF 2022

MUNEER AHMED BASHIR QURESHI
VERSUS
MAHANANDA CHANDRAKANT BHADRE AND OTHERS

...
Advocate for Petitioner : Mr. M. S. Choudhary
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CORAM : NITIN B. SURYAWANSHI, J.
DATE : 10-03-2022

PER COURT :-

The petitioner is aggrieved by the order passed by the learned Civil Judge, Senior Division, Udgir, below Exhibit-57 in Special Civil Suit No. 80 of 2018.

2. The suit is filed by the respondents for partition and separate possession of the ancestral property. The petitioner filed application Exhibit-57, under Order I, Rule 10 (4) of the Code of Civil Procedure, for adding him as necessary party defendant no.3, contending that the applicant/petitioner has out of the suit property, land survey nos. 226 and 227 of Udgir, are not ancestral property and not partitionable amongst the parties to the suit and the same was self acquired property of the deceased mother of the plaintiffs and the defendants. During the life time of mother of the plaintiffs and the defendants, Sumanbai had transferred 16 R.

to each defendants and 4 R land was retained by her. The defendants and their deceased mother had executed agreement for sale dated 27.10.2017 in favour of petitioner and earnest money was also paid by the petitioner and the possession of 28,000 Square feet land handed over to the petitioner. Though, the plaintiffs and respondents no. 5 and 6 are not parties to the agreement of sale dated 27.10.2017, they were aware about the said transaction. As such, valuable rights and interest of the petitioner is involved in the present suit, and therefore, he may be added as party defendant.

3. The trial Court, after hearing the parties, rejected the application holding that, "the applicant is seeking leave to add himself as party defendant on the basis of an agreement of sale dated 27.10.2017, which is purported to have been executed by the deceased mother of plaintiffs and defendants, in his favour. The copies of the agreement of sale as well as extended agreements executed thereafter are produced on record. The said documents go to show that the outer time limit fixed for the agreement was 20.05.2021. It had a stipulation of closure of the agreement in the absence of abilities of the parties to execute the sale deed. The agreements are not registered documents. Admittedly, the applicant is not seeking addition of himself as defendant on the basis of any sale deed."

The trial Court further held that, "as per Section 54 of the Transfer of Property Act, mere contract of sale of immovable property does not by itself create any interest or charge on such property."

4. Admittedly, the suit is between the members of the Joint Hindu Family. In the light of time barred agreement and in view of provision of Section 54 of the Transfer of Property Act, the petitioner has no right to get impleaded as party defendant in the suit between the members of Hindu Joint Family for partition and possession of the ancestral property. The trial Court was therefore justified in rejecting the application of the petitioner.

5. Learned Advocate for the petitioner, in support of petition has placed reliance on decision of Single Judge of the *Madras High Court*, in *C.M.V. Krishnamachari Versus M. D. Dhanalakshmi Ammal and others*, *AIR 1968 Mad 142*, wherein it is held that,

"The applicant will not get any relief by way of specific performance in this suit and this he can obtain only in a separate suit of his own. He is impleaded only for the limited purpose of (a) establishing that the property is the separate property of his vendor, the first defendant, or alternatively (b) for suggesting to the Court that without prejudice to the interest of the plaintiffs the property agreed to be sold may be allotted to the share of the first defendant, so that in a separate suit of his own he can either obtain specific performance or enforce a charge under Section 55(6)(b) against the

property in the hands of the first defendant after a final allotment in the partition suit.”

The facts in the above ruling are different and are not applicable to the facts of the case in hand.

6. For the aforestated reasons, no illegality or perversity is found in the order impugned in the present petition.

7. The writ petition being devoid of merits is dismissed. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

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