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

919 WRIT PETITION NO.12448 OF 2021

**ASHOK SHANKAR SHIMPI
VERSUS
KISHOR ONKAR JAGTAP AND OTHERS**

...
Mr Vinesh Solshe, Advocate h/f Mr M. H. Patil, Advocate for
petitioner

CORAM : SMT. BHARATI DANGRE, J.

DATE : 5th January, 2022

PER COURT:

1. By the present writ petition, the petitioner, the original plaintiff, assail the two orders passed by the learned 5th Joint Civil Judge Junior Division, Dhule, below Exh.15 and Exh. 47 in Regular Civil Suit No.137/2015, filed by him for specific performance of an agreement as against the original defendant Nos.1 to 3.

2. In the suit filed for specific performance, the plaintiff sought performance of a contract in respect of CTS No.3516-A, admeasuring 486 sq. mtr. at Dhule, which is the property pleaded to have been owned by the father of the plaintiff and after his death, it acquired the status of the joint family property of the

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plaintiff and the other heirs of the deceased father. The sister of the plaintiff Pushpa alia Chhaya, who also had undivided share in the suit property, is alleged to have orally relinquished her undivided share in favour of the plaintiff apart from his mother and other sisters. It is pleaded in the plaint that there is a specific reason why the names of the mother and other sisters along with Pushpa are not recorded in the 7/12 extract. Said Pushpa died in the year 1998 leaving behind her husband, son and daughter, who are alleged to have been her only heirs. On 02/07/2003, it is pleaded that an agreement was executed between the plaintiff and respondent Nos.1 to 3, the legal heirs of Pushpa, who agreed to relinquish their share in favour of the plaintiff and accordingly a document was executed on 07/03/2005, where they admitted that they have no claim in respect of the suit property and they have relinquished their share in the suit property in favour of the plaintiff and agreed to execute the document.

The plaintiff instituted the Special Civil Suit No.184/2007 against the defendant No.4 – Ratilal Shankar Shimpi, claiming partition and separate possession in respect of the same suit property, since his other sister had relinquished her share in his favour. The defendant Nos.1 to 3 also took a similar stand and

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filed their written statement, but in the Special Civil Suit, they filed a written statement and denied the relinquishment. This constrained the plaintiff to file Regular Civil Suit No.137/2015 against defendant Nos.1 to 3 for specific performance of contract.

3. In the said suit, the defendant No.4 filed an application under Order I Rule 10 of the Code of Civil Procedure for his impleadment as a party defendant, on account of the fact that he also claims to be the owner and in possession of the suit property. In the application filed below Exh.15, it was contended by the said proposed defendant that he is the owner and possessor of the property and by suppressing the said fact, the proceedings are instituted by the plaintiff. On 18/02/2017, after hearing the third part as well as the plaintiff and perusal of the necessary documents filed on record, the learned Joint Civil Judge Senior Division, Dhule, allowed the application by recording that the plaintiff had filed the property extract of the suit property, which clearly reflect the name of the applicant Ratilal Shankar Shimpi. Recording that the presence of the third party is necessary to enable the Court to effectually and completely adjudicate the questions involved in the suit, the application came to be allowed.

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4. On the application being allowed, the defendant No.4 has also filed his written statement and the issues are settled on 09/01/2020. After framing of the issues, on 11/03/2020, the plaintiff moved an application under Order I Rule 10 sub-clause 2 of the Code of Civil Procedure, seeking deletion of defendant No.4 on the ground that no issue has been settled revolving around the defendant No.4 and he is not a necessary party for effective adjudication of the suit.

The learned Judge had rejected the said application (Exh.47) by the impugned order passed on 29/07/2021, which is also assailed in present petition along with first order, permitting impleadment of defendant No.4 as a party to the suit.

Heard the learned Counsel for the petitioner and perused the impugned order passed below Exh.47. The said order will have to be read with reference to Order I Rule 10 sub-clause 2 of the Code of Civil Procedure, which 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

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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.”

5. Perusal of the aforesaid clause would reveal that the said sub-clause deal with two contingencies; the first when the Court may at any stage of the proceedings, either upon or without application of the either party, order that the name of any party improperly joined as plaintiff or defendant to be struck down and secondly, the name of the 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 adjudicate upon and settle all the questions involved in the suit be added. The two distinct contingencies stipulated under sub-clause 2 of Rule 10 of the Order I, is sought to be invoked by moving an application, in the backdrop of the fact that in the year 2017 and to be precise on 18/02/2017, recording that the name of the third party, who sought an intervention in the suit, has already been directed to be impleaded in the suit, after affording an opportunity of hearing to the plaintiff and particularly, by recording that the title document

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of the property to be relied upon by the plaintiff, clearly reveal the name of Ratilal Shimpi.

6. After this suit has further proceeded and the newly added defendant has filed his written statement, now an application is filed taking recourse to sub-clause 2 of Rule 10 of Order I requesting the Court to strike out his name from the array of the defendant. Apart from challenging the said order, the order passed on 18/02/2017 is also challenged in the writ petition filed in the year 2021, when the proceedings have advanced further and it is informed that the suit is now scheduled for evidence.

7. The necessary parties to the suit are those, without whose presence, the Court cannot effectually and completely adjudicate upon and settle the questions involved in the suit. There is no dispute about the fact that the name of the defendant No.4 is found on the title document and therefore, he necessarily has an interest in the property, in respect of which the plaintiff is seeking specific performance qua defendant Nos.1 to 3.

8. In the aforesaid circumstances, since the interest of the newly added defendant is likely to clash with that of the plaintiff, whose name is also included in the title documents and the

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learned Court has already allowed his impleadment in the suit, at later point of time, merely because the issues settled by the Court on 09/01/2020, do not revolve around the defendant No.4, would not be a ground to strike out his name from the array of the defendants. The issues that have been settled by the learned Judge revolve around the dispute between the plaintiff and defendant Nos.1 to 3, however, taking into account the interest of the defendant No.1 in the suit property, the application filed by him under order 1 Rule 10 has rightly been allowed on 08/02/2017 and the subsequent application seeking striking of his name from array of the defendants has also been rightly rejected by the learned Judge.

The learned Counsel for the petitioner has relied upon a decision of the Hon'ble Apex Court in case of **Kasturi Vs. Iyyamperumal and others, reported in (2005) 3 SCC 574**, in support of his submission. The perusal of the aforesaid law report would clearly reveal that specific pronouncement is in respect of the persons seeking impleadment in the suit for specific performance, on the basis of the subsequent title and therefore the ratio laid down by the Hon'ble Apex Court in the decision is not at all support to the present petitioner. Another decision on which

the learned Counsel placed reliance is a decision of this Court in case of **Sanjiv Ganpati Nawal vs. Shramrao Namdeorao Patil and another, reported in (1994) 1 Mh.L.J. 628**, which is in respect of the suit being filed for specific performance against defendant, on the basis of an agreement between plaintiff and defendant. In the said judgment, by referring to Order I Rule 10(2) of the Code of Civil Procedure, the Court has highlighted the powers of the Court to add the parties / to strike the parties. In the peculiar facts and circumstances of the case, recording that the parties whose interest is likely to be protected are to be brought on record, the issue has been answered in the facts of the peculiar case. Even this judgment, in my considered opinion, do not assist in any manner to the petitioner/plaintiff.

Since no legal infirmity is noted in the impugned orders, the orders are upheld, necessarily the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)

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