

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13250 OF 2019

PAWAN PRAKASH BANSAL AGRAWAL
VERSUS
CHAMPALAL BHARULAL JAIN

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Advocate for Petitioner : Mr. Mukul Kulkarni
AGP for Respondent-State: Mr. Y.G. Gujarathi
Advocate for Respondent: Mrs. Charuta Deshmukh

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th AUGUST, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 3rd Joint Civil Judge, Senior Division, Dhule, below Exhibit-36 in Special Civil Suit No. 32/2017, whereby application filed by the petitioner is partly allowed.

2. The petitioner has filed suit for specific performance of contract in respect of suit property. The respondent resisted the suit by filing written statement and counter claim.

3. The petitioner thereafter filed application Exhibit-36 under Order VI Rule 17 and Order I Rule 10 of Civil Procedure Code, for amendment and for addition of parties in the suit. The

proposed amendment was in respect of correction of gut No. '504/1A' as 'gut No. 504/1B' which was at the western side of the suit property. The petitioner further contended in the said application that out of said gut No. 504/1B, 200 sq.mtr area is given in possession of the petitioner. It appears from the averments in the said application that said gut number stands in the name of proposed defendants, who are sons of original defendant/respondent. The petitioner therefore prayed that they may be permitted to be added as defendant nos. 2 and 3 in the suit.

4. The application was opposed by filing a detail say by the respondent contending that in a suit for specific performance of a contract there is no necessity to add strangers as a party. The proposed defendants are not party to the agreement of which specific performance is sought by the petitioner. Since the suit is for specific performance the dispute is between the petitioner and the respondent only and therefore application is required to be rejected.

5. The Trial Court partly allowed the application filed by the petitioner and permitted amendment to the extent of

correction in gut number. However, rejected the prayer of the petitioner for adding prayer for amendment proposed in application in terms of prayer clause 'C', 'D' and proposed amendment in paragraph 18A of the plaint. Hence, this petition.

6. Heard the learned advocate for the petitioner and learned advocate for the respondent.

7. The learned advocate for the petitioner by placing reliance on the decision in *Kasturi Vs. Iyyamperumal and Ors.,* [AIR 2005 SC 2813], which is also referred in the impugned order by the Trial Court, submitted that the Trial Court has misinterpreted the ratio in *Kasturi* (supra). Further by relying on the decision in *Robin Ramjibhai Patel Vs. Anandibai Rama Alias Rajaram Pawar and Others* [(2018) 15 SCC 614], he submits that the parties sought to be added are necessary and proper parties and proposed amendment is necessary to resolve the dispute between the parties. According to him, since the property gut no. 504/1B stands in the name of proposed defendants, they are necessary parties and therefore proposed amendment ought to have been allowed by the Trial Court.

8. The learned advocate for the respondent on the other hand supports the impugned order. According to her, since the suit is for specific performance, the lis is between the petitioner/plaintiff and respondent/defendant and proposed defendants are not party to the agreement to sale, specific performance of which is sought in the suit, they are not necessary parties and the Trial Court is justified in rejecting the amendment sought by the petitioner and addition of defendants No. 2 and 3. By relying on *Shamrao Rajeshwarrao Potdukhe Vs. Gurukul Gruha Nirman Bhadekaru Malki Sahakari Sanstha Maryadit, Chandrapur and others*, [1995 (1) Mh.L.J. 893], she submits that, since the proposed defendants are stranger to the contract, they cannot be impleaded as party in the suit and they are not necessary nor proper party.

9. It is not in dispute that the suit is filed for specific performance of contract i.e. agreement to sale. The description of the property agreed to be sold in the said agreement is given in which on the boundaries of western side gut no. 504/1 is mentioned. In the written statement filed by the respondent it is mentioned that on the western side gut no. 504/1B is there and not gut no. 504/1A. Said gut no. 504/1B is not belonging to the

respondent. Realizing this aspect the petitioner has filed Exhibit-36, wherein correction is sought in western side gut no. 504/1A as gut no. 504/1B and the same is permitted by the Trial Court.

10. In the said application the petitioner has stated that out of gut no. 504/1A, 200 sq. mtr area is in possession of the petitioner in view of averment in the written statement that towards western side gut no. 504/1B is there. On verification of the documents it was realized that the western side property is gut no. 504/1B.

11. It is further clear from the averments in the said application that gut no. 504/1B stands in the name of proposed defendants. It is specifically averred that 200 sq. mtr area which is given in possession of the petitioner out of gut no. 504/1B stands in the name of both the proposed defendants and the proposed defendants being sons of the respondent they were aware of said agreement to sale. It is therefore clear that the petitioner has claimed property out of gut no. 504/1B and therefore, since said property stands in the name of proposed defendants, they are necessary and proper parties to the suit. The Trial Court ought to have considered this aspect and ought

to have allowed the application filed by the petitioner in its entirety. The proposed amendment is necessary to avoid multiplicity of litigation and same would help the Trial Court to effectively resolve the dispute between the parties.

12. In Robin Patel (supra), the Apex Court has held:

"6. Coming to the judgment in Kasturi case, it is notable that the suit for specific performance of contract for sale was filed by the appellant against Respondents 2 and 3. In the said suit Respondents 1 & 4 to 11, who were not parties to the contract and had set up a claim of independent title and possession over the contracted property, filed an application to get themselves added in the suit as defendants. The trial court allowed the application on the ground that such respondents had direct interest in the subject-matter of the suit and hence their presence would be necessary to decide the controversies raised in the suit. The High Court confirmed the said order and then the plaintiff came to this Court as appellant and their prayer was allowed by this Court. This Court took a clear view in para 21 in the following terms: (Kasturi case, SCC pp. 744-45)

"21. It may be reiterated here that if the appellant who has filed the instant suit for specific performance of contract for sale even

after receiving the notice of claim of title and possession by Respondents 1 and 4 to 11 does not want to join Respondents 1 and 4 to 11 in the pending suit, it is always done at the risk of the appellant because he cannot be forced to join Respondents 1 and 4 to 11 as party-defendants in such suit. In Ramesh Hirachand Kundanmal v. Municipal Corpn. Of Greater Bombay on the question of jurisdiction this Court has clearly laid down that it is always open to the court to interfere with an order allowing an application for addition of parties when it is found that the courts below had gone wrong in concluding that the persons sought to be added in the suit were necessary or proper parties to be added as defendants in the suit instituted by the appellant-plaintiff. In that case also this Court interfered with the orders of the courts below and rejected the application for addition of parties. Such being the position, it can no longer be said that this Court cannot set aside the impugned orders of the courts below on the ground that jurisdiction to invoke power under Order 1 Rule 10 CPC has already been exercised by the two courts below in favour of Respondents 1 and 4 to 11."

7. *As it appears from the aforesaid paragraph this Court accepted the status of dominus litus of the*

plaintiff and proceeded to hold that if the plaintiff did not want to join the rival claimants as defendant in the pending suit, the risk was totally of the plaintiff and he cannot be forced to join them as party-defendant.

8. In the aforesaid context, this Court also considered the provisions of Order 1 Rule 10 CPC and in para 7 it expressed its view that the relevant provisions show that the necessary parties in a suit for specific performance of a contract for sale are not only parties to the contract or their legal representatives but also a person who had purchased the contracted property from the vendor. It was further elaborated that: (Kasturi case, SCC p. 738, para 7)

"7.... In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party."

9. In our considered opinion, the judgment of the three-Judge Bench in Kasturi case recognises this special status of a plaintiff which is well settled by

several earlier judgments also and when the plaintiff wants to implead certain persons as defendants on the ground that they may be adversely affected by the outcome of the suit, then interest of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors."

The ratio in *Robin Patel* (supra) supports the case of the petitioner.

13. In *Kasturi* (supra), it is held:

"17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondents Nos. 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale."

14. In Asian Hotels (North) Ltd., v. Alok Kumar Lodha [AIR 2022 SC 3322], the Apex Court has held that "*principle that plaintiff is dominus litis shall be applicable only in case where parties sought to be added as defendants are necessary or proper parties.*" Since in the facts of the present case, this Court is of the view that the proposed defendants are necessary and proper parties, this ruling does not assist the respondents.

15. In *Shamrao Potdukhe* (supra), co-ordinate bench of this Court held that "*in a suit for specific performance, such suit being limited to the agreement of which specific performance is sought, stranger to the contract cannot be impleaded as party in the suit, he being neither a necessary nor proper party.*"

16. As has been held hereinabove, since the property stands in the name of proposed defendants and petitioner is claiming portion out of that property, they are necessary and proper parties.

17. For the aforesaid reasons, the writ petition is allowed in terms of prayer clause 'A'.

18. The impugned order to the extent it rejects amendment in prayer clause 'C' and 'D' of the application is hereby quashed and set aside.

19. Application Exhibit-36 is allowed. No costs.

[NITIN B. SURYAWANSHI, J.]