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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 4888 OF 2016

SAHEBRAO BAJABA PISAL

....PETITIONER

V/s.

**SHANTARAM SAVLA PAWAR @ BHALEGHARERESPONDENTS
AND ORS**

**Mr. Nikhil Wadikar i/b Nandu V. Pawar for the Petitioner
Mr. Mohan N. Dhamal for Respondent nos. 1, 6 & 8**

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 1, 2022.

P.C.:

1) In a Suit for partition being R.C.S. No. 54/1996 vide order passed below Exh. 48 in exercise of powers under Order I Rule 10(2) of Code of Civil Procedure, 1908, Petitioner came to be impleaded as Defendant no. 9 on 01/04/2004. Said impleadment is based on Agreement of Sale existing in favour of the Petitioner executed by Defendant nos. 2 & 3 in relation to part of the Suit property.

2) At later stage, Plaintiff to the said Suit has taken out Application Exh. 166 for deletion of Petitioner-Defendant no. 9 which

came to be allowed vide impugned order dated 30/01/2015. As such, this Petition by Defendant no. 9.

3) Submissions of learned counsel for Respondent-Plaintiff are, Petitioner is not necessary party or an appropriate party to the Suit as Suit for specific performance is independently pending at his behest. Unless his rights are crystallized qua his interest or lawful right in Suit property, Court below was justified in ordering deletion. Counsel for Respondent would urge that at the behest of Petitioner, Suit for partition is delayed.

4) I have considered said submissions in the light of aforesaid fact that in 2004, Petitioner was directed to be impleaded as Defendant no. 9. As such, Petitioner has actively participated in the Suit proceedings.

5) The fact remains that earlier order of impleadment passed in favour of present Petitioner way back in 2004 directing his impleadment as Defendant no. 9 is governing the proceedings for last more than 15 years.

6) It is informed by the counsel for Respondent that Suit in question has reached at the stage of final verdict at which point

Application Exh. 166 is taken out with a reasoning that the parties to the Suit intend to settle their disputes inter-se.

7) Even if the parties to the Suit except Defendant no. 9 intend to settle their dispute, Petitioner cannot be considered as a hurdle to such settlement as if not agreed, said settlement will not be binding on the Petitioner-Defendant no. 9 qua other parties as fact remains that independent Suit of the Petitioner for specific performance is already pending.

8) In the aforesaid background and having regard to the position of law as cited before me in the Judgment of Madras High Court in the matter of **M. V. Krishnamachari V/s. M. D. Dhanalakshmi Ammal and others**¹ order impugned is not sustainable. As such, Writ Petition stands allowed. Order below Application Exh. 166 dated 30/01/2015 is hereby quashed and set aside.

9) Since the Suit is pending for last more than 10 years, hearing of the same is ordered to be expedited.

[NITIN W. SAMBRE, J.]

¹ AIR 1968 MADRAS 142