

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

WRIT PETITION 9871 OF 2014

1. Jalandar Santu Kamble (since deceased)
A] Smt. Droupadi Jalandar Kamble & Ors ... Petitioners.

Versus

1. The Chief Promoter, Ghatanakar Co-operative Housing Society (Proposed),
Jaysingpur – Milind S. Kudale & Ors. ... Respondents.

Mr. Vijay Killedar, Advocate for the Petitioners.
Mr. A. P. Vanarse, AGP for the State – Respondents 4 to 7.

CORAM : ROHIT B. DEO, J.

DATE : JULY 04, 2022

P.C. :-

1. None appears on behalf of Respondent 1, the contesting party.

2. The Petitioners are Defendants 5 to 14 in Regular Civil Suit 22 of 2014 filed for partition and separate possession. The Plaintiffs in the suit are the Respondents 2 and 3 herein.

3. The Respondent 1 preferred an Application purportedly

invoking the provisions of Order 1 Rule 10, seeking impleadment. Respondent 1, the third party, averred that by an agreement dated 16.02.1985, the Defendant-Mr. Jalandar Santu Kamble had agreed to sell the property described at Serial - I 'A' in the plaint, in favour of the third party.

4. It appears that the Plaintiff as well as the Defendants seriously opposed the application preferred by the third party. In particular, the Plaintiff and the Defendant pointed out that the purported rights of the third party are already adjudicated in other proceeding and the findings have assumed finality. Vide order dated 01.08.2014, the learned trial Judge has allowed the Application, reasoning that if the third party is impleaded, all the disputes can be resolved once and for all. However, there does not appear to be serious consideration of the legal issues arisen.

5. I am satisfied, for reasons more than one, that the learned trial Judge committed a serious error. In the first place, a person who allegedly holds an agreement of sale, cannot insist on impleadment in a partition suit. The agreement of sale does not create any right in the property in

contradistinction with sale deed. The only remedy for such person is to take appropriate steps against the vendor qua the share and interest to which the vendor may be ultimately found entitled in the partition suit. More importantly, I have perused the judgment in Regular Civil Appeal 11 of 2006 which is Exhibit 'F' to the petition. The issues which are framed by the learned

Appellate Court read thus :

1.	Whether it is proved that defendant has agreed to sell the suit land to the plaintiff for Rs. 36,750/- and has executed an agreement deed in favour of plaintiff on 16.02.1985?	No.
2.	Whether it is proved that the defendant has received the entire consideration of agreement from the plaintiff ?.	No.
3.	Whether it is proved that the plaintiff was ever ready and willing to perform its part of agreement ?.	No.
4.	Whether it is proved that Shankar has obtained signature of defendant on a blank stamp paper and some other papers and misused them in this case ?.	Does not survive. If survives, no.
5.	Whether the plaintiff is entitled to a decree for specific performance of agreement ?.	No.
6.	Whether the Judgment and Decree of	Yes.

	the Trial Court are legal ?.	
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6. The learned counsel states that the findings which are recorded by the Appellate Court, *inter alia*, the findings that the agreement dated 16.02.1985 is not proved and that the Plaintiff who is third party in the present proceeding, is not entitled to specific performance, have assumed finality since the third party did not prefer second Appeal, challenging the judgment of the District Judge 1, Jaysingpur.

7. On a holistic view of the matter, the order impugned is manifestly erroneous and is set aside.

8. Application preferred by the third party, seeking impleadment is rejected.

9. The Petition is allowed in the aforesaid terms.

(ROHIT B. DEO, J.)

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