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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2073 OF 2022

BHAGWANTRAO BALASAHEB TAMBE

....PETITIONER

V/s.

VITTHAL PANDURANG THORAT AND ORS

.....RESPONDENTS

WITH

CIVIL WRIT PETITION NO. 2124 OF 2022

BHAGWANTRAO BALASAHEB TAMBE

....PETITIONER

V/s.

DEUBAI SATU THORAT AND ORS

.....RESPONDENTS

Mr. Mr. Prashant Darandale Advocate for the Petitioner in both Writ Petitions.

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 4, 2022.

P.C.:

1) Heard.

2) In a suit for specific performance, setting aside Decree of partition. Vide impugned order, impleadment of Petitioner is directed

as Defendant at the request of Respondent-Plaintiff. Petitioner has relied on the Judgment of Apex Court in the matter of **Kasturi v. Iyyamperumal and Ors.**¹, and submits that Court below ought not to have granted impleadment as Suit property is self acquired of the Petitioners.

3) Counsel for the Petitioner has contended that defendants to the Suit have way back brought to the notice to Respondent No. 1/Plaintiff about the partition decree. Trial in the Suit has already commenced. As such, Respondent No. 1 has failed to follow the principle of due diligence as amendment is moved at much belated stage. That being so, Court below ought not to have granted relief.

4) Fact remains that Suit contains specific prayer in the nature of declaration that the decree passed in Suit for partition being Special Civil Suit No. 1502/2008 is not binding on the right of Respondent No. 1 Plaintiff. It is urged that prayer for grant of specific performance is after obtaining permission from government authorities.

5) As far as the factual matrix based on the aforesaid is concerned, partition decree which is passed in Special Civil Suit No.

¹ AIR 2005 Supreme Court 2813

1502/2008, Respondent / Plaintiff was not a party whereas present Petitioner and his sons were only parties to the said Suit.

6) It is claimed that Suit property is self acquired property of the Petitioner and that being so, Defendant to the Suit who are sons of the Petitioner, were not having any authority in law to transfer the same. Court is required to be sensitive to the fact that decree in the aforesaid Suit i.e. Special Civil Suit No. 1502/2008 will not bind the Respondent No. 1 i.e. Plaintiff as he was never a party to the said decree. As such, principle of res-judicata won't operate against Respondent No. 1.

7) As far as the issue of due diligence is concerned, I am informed that trial in the Suit has already commenced as Plaintiff has entered into witness box. Agreement to sale was executed by sons of Petitioner/Defendant No. 8 and so as to take decree, in case if passed in the Suit for specific performance, to its logical end, Petitioner appears to be not only appropriate but necessary party in the backdrop of Decree in earlier Suit. The issue of due diligence was appropriately looked into by the Court below and noticed that impleadment of Petitioner is necessary for proper adjudication of the

claim made in the Suit. That being so, Court was justified in permitting the impleadment and amendment.

8) In the aforesaid background, particularly having regard to challenge to a partition decree in the Suit, Petitioner appears to be necessary party to the present Suit. That being so, the principle laid down by the Apex Court in the matter of **Kasturi v. Iyyamperumal and Ors.** [cited supra] will be of hardly any assistance. That being so, in both the Petitions I hardly notice any illegality. Both Petitions stand dismissed.

[NITIN W. SAMBRE, J.]