

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4222 OF 2021

Ramesh Banshnarayan Dubey ..Petitioner
Versus
Shri. Naresh Sunderlal Jain and Ors. ..Respondents

Mr. Satyajeet H. Joshi, for the Petitioner.
Mr. Ramgopal Tripathi i/by Vinodkumar Shukla & Kanchan Gupta,
for the Respondent Nos.1 & 2.
Mr. Manoj Shukla, for Respondent Nos.3 & 4.
Mr. A. J. Almeida, for Respondent No.5.

CORAM : NITIN W. SAMBRE, J.

DATE : 12th APRIL, 2022

PC.

1. This petition is by the plaintiff in whose suit for simplicitor injunction based on title being RCS No.105 of 2019 applications Exhs.21, 25 and 33 preferred under Order I Rule 10 of the CPC came to be allowed vide common order dated 25th January, 2020 directing impleadment of three parties.

2. Submissions of learned counsel for the petitioner are, the petitioner/plaintiff is *dominus litis*. The suit is based on registered sale-deed dated 10th July, 2012.

3. In a suit for injunction based on title, the vendor of the petitioner is not a necessary party. That being so, the order

impugned is not sustainable.

4. Counsel for the original defendant and newly added defendants have supported the order impugned. The defendants claim that though they have purchased the property, they are unable to enjoy the same, as there exist dispute *inter se* between the vendor of the plaintiff and the plaintiff.

5. The newly added defendants claim that they are necessary party, as the sale-deed dated 10th July, 2012 executed in favour of the petitioner confers a defective title. Reliance is placed on the recitals of Power of Attorney and other documents to claim that there was no authority to execute sale-deed in favour of the petitioner/plaintiff. As such, it is claimed that so as to decide the issue/*lis* as regards entitlement of the petitioner to a claim for injunction, if not necessary, the respondents are appropriate party.

6. I have considered submissions.

7. The title in the petitioner stood vide registered sale-deed dated 10th July, 2012 based on notarized Power of Attorney executed by the defendants *inter se*. In view of presumption provided under Section 85 of the Indian Evidence Act, the burden is on the newly added defendants to prove that the sale-deed does not confer title in the petitioner/plaintiff. However, such plea cannot be permitted in a suit as a stranger, as it was for the newly added

defendants to initiate independent suit proceeding with claim for relief for title. I am informed that respondent No.5 has already initiated Regular Civil Suit No.157 of 2019, which is pending on the file of Civil Judge, Junior Division, Palghar, wherein title of the petitioner by virtue of sale-deed dated 10th July, 2012 is under challenge.

8. In the aforesaid background, the claim of the respondents that they are appropriate party to the suit ought not to have been entertained by the Trial Court and as such Trial Court has erred in granting applications. As such, order impugned passed below Exhs.21, 25 and 33 on 25th January, 2020 is hereby quashed and set aside. Applications Exhs.21, 25 and 33 stand rejected.

9. However, this will not preclude the respondent No.5 in moving before the learned Principal District Judge for clubbing of the present suit with that of Regular Civil Suit No.157 of 2019 in which title of the petitioner is under challenge.

10. The petition as such stands allowed in above terms.

[NTIN W. SAMBRE, J.]