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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 3722 OF 2019

SANDEEP RAMESH BINAWAT

....PETITIONER

V/s.

**SMT. LILABAI SADASHIV MODAK
DECD AND ORS**

...RESPONDENTS

WITH

CIVIL WRIT PETITION NO. 3725 OF 2019

SUNDER GULAB KACHRAVAT AND ANR

.....PETITIONERS

V/s.

**SMT. LILABAI SADASHIV MODAK DECD AND
ORS**

.....RESPONDENTS

**Mr. C. G. Gavnekar a/w Ashutosh Gavnekar Advocate for the
Petitioners in both Petitions**

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 31, 2022.

P.C.:

- 1) Heard Counsel for the Petitioners.**
- 2) Though served, none appears for Respondents.**

- 3) This Petition is by third parties to the suit.
- 4) In R.C.S. No. 999 of 2009, which is for partition and separate possession, Petitioners claimed to have purchased part of the property vide sale deed dated 30/08/2013 as a consequence of which, under Order 22 Rule 10 of Code of Civil Procedure, 1908 they were impleaded as party Defendants vide order passed below Exh. 70 & 73 on 23/08/2018.
- 5) I am informed that said order since is not carried out by amending the Plaint, Petitioners moved Applications Exhibits 77 and 79 seeking permission of the Court to amend the Plaint on their own which is rejected vide order dated 4/01/2019.
- 6) Counsel for the Petitioners submits that once the Court passes an order, in this case below Exhibit 70 and 73, it cannot be said that the Court is handicapped in executing the said order by putting the parties to the condition of carrying out amendment.
- 7) He would further urge that since the parties to the Suit but for the Petitioners are in blood relation, they have colluded together, thereby not complying with the orders passed below Exhibit 70 and 73.

8) According to him, the Trial Court or this Court has power to exercise inherent powers under section 151 of CPC so as to avoid the abuse of process of law.

9) Though served, none appears for Respondents. As such this petition remained pending for last 3 years.

10) In the aforesaid background, if the submissions of learned counsel for the Petitioners are appreciated, it is apparent that prayer of the Petitioners for impleadment as party Defendants is based on their rights accrued in the said property by registered sale deed dated 30/08/2013 executed by Plaintiffs.

11) Once the court below passed an order of impleadment, it was for the Trial Court to take the order to its logical end by putting the Plaintiffs to condition of incorporating the present Petitioners as party Defendants in the Suit.

12) There appears to be substance in the submissions of Counsel for the Petitioners that Plaintiffs and Defendants who are blood relatives have colluded so as to frustrate the claim of the Petitioners by keeping them away from the Suit proceedings. In the aforesaid background, submissions of the learned counsel for the Petitioners

that the Trial court should have exercised the powers under section 151 of CPC or else should have put the Plaintiffs to a condition of incorporation needs to be accepted.

13) Considering the conduct of the Plaintiffs of not complying with the orders of the Trial Court passed below Exhibit 70 and 73, in my opinion, said Plaintiffs are required to be put to stringent conditions.

14) If the Respondents-Plaintiffs failed to comply with the order dated 23/08/2018 passed below Exhibit 70 and 73 by incorporating the Petitioners as party Defendants to the Suit in RCS No. 999 of 2009 within period of 2 weeks from the date of production of this order, on the next date of hearing of the Suit proceedings, the Trial Court shall pass a consequential order thereby dismissing the Suit for non compliance of the order.

15) Petitions as such stand allowed in the above terms

[NITIN W. SAMBRE, J.]