

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

WRIT PETITION NO.6292 OF 2018

M/s. Kuber Laxmi Developers
Through its Partners and Ors.

..Petitioners

Versus

Mr. Dattaram Namdeo Gaikwad
alias Kaikadi and Ors.

..Respondents

Ms. Gauri Godse, for the Petitioners.

Mr. Rohit P. Sakhadeo, for the Respondent No.6.

Mr. Shriniwas Patwardhan a/w Bhooshan Mandlik, for the
Respondent No.7.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st MARCH, 2022

PC.

1. Though served, none appears for the contesting
respondent i.e. defendant No.2.

2. In a suit for specific performance petitioner/plaintiff
suffered an order below Exh.48, wherein on an objection of
respondent/defendant No.2, Trial Court directed deletion of plaintiff
Nos.2, 3 and 4 who happened to be partners of the firm and further
granted liberty to implead them as defendants, if so desired or
required.

3. For passing such order, a support is drawn from the
order of this Court passed in First Appeal Stamp No.16769 of 2016

decided on 22nd December, 2016. The Trial Court was of the view that the benefit of aforesaid order passed by this Court can be extended only to the extent of plaintiff in earlier Suit No.329 of 2015 (RCS No.713 of 2012).

4. Heard Ms. Gauri Godse, learned counsel for the petitioner and Mr. S. S. Patwardhan, learned counsel appearing for the respondent No.7, who is defendant No.7 to the suit in question and opposing the cause in the suit.

5. The issue as to whether at the behest of the plaintiff Nos.2, 3 and 4 cause is maintainable or not along with plaintiff No.1 can be decided in the suit itself. However, the Court below, in my opinion, has misinterpreted order of this Court dated 22nd December, 2016 passed in First Appeal Stamp No.16769 of 2016 to mean that the present suit is maintainable only at the behest of the plaintiff and not plaintiff Nos.2, 3 and 4. Rather this Court or in law, there is no embargo created on the right of plaintiff Nos.2, 3 and 4 to initiate suit in question

6. That being so, in my opinion, the order impugned dated 18th March, 2018 passed by the Civil Judge Senior Division, Panvel is not sustainable. Accordingly, order impugned dated 18th March, 2018 same is quashed and set aside.

7. The suit is permitted to be prosecuted by plaintiff No.1

along with plaintiff Nos.2, 3 and 4. In case, if pleadings give rise of framing of issue under Order XIV Rule 1 of the CPC in relation to the maintainability of the suit at the behest of plaintiff Nos.2, 3 and 4, let such issue be decided independent of the finding record in the present order.

8. The Petition as such stands allowed in above terms.

[NITIN W. SAMBRE, J.]