

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

WRIT PETITION NO.8508 OF 2019

Shri. Hanmant Haridas Kadam ..Petitioner
Versus
Sou. Radha @ Indu Gajanan Lohar and Ors. ..Respondents

Mr. Satyajeet A. Rajeshirke, for the Petitioner.
Mr. Santaram A. Tarale, for Respondent Nos.1 to 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st MARCH, 2022

PC.

1. The petitioner, defendant No.11 to a suit for partition being RCS No.97 2004 was impleaded and summons was served on him 18th July, 2018.

2. His impleadment is based on the title vested in him during pendency of the suit, which he has acquired from defendant Nos.2 to 4. Based on the same, prayer of the petitioner below Exh.136 for permission to place on record written statement came to be rejected. As such, this petition.

3. Submissions of Mr. Rajeshirke are, once the petitioner is impleaded as defendant, by virtue of statutory fiction under Order VIII of CPC, he has every legal right to defend the suit by filing written statement, which Court cannot take away by virtue of

provision of Section 52 of the Transfer of Property Act, 1882.

4. Counsel for the respondents/plaintiffs while supporting order impugned would urge that the suit is of 2004 and only with an intention to defeat the cause for which the suit is filed, the defendant Nos.2 to 4 executed sale-deed on 12th February, 2015 in favour of the petitioner/defendant No.11 with an intention to create more complication. He would claim that petitioner in calculated manner with an intention to delay the suit, as the same has reached the stage of final hearing, had taken out these proceedings. According to him, the Court below is justified in rejecting the prayer.

5. I have appreciated the said submissions.

6. Based on the sale-deed dated 12th February, 2015, the petitioner came to be impleaded as defendant No.11. The moment petitioner is impleaded by virtue of provisions of Order VIII of the CPC, he would get right to file written statement within a period of thirty days of his appearance i.e. from 4th August, 2018.

7. The Court below in aforesaid eventuality ought not to have rejected the prayer of the petitioner of permitting him to place on record written statement just because his predecessor in title i.e. defendant Nos.2 to 4 were proceeded without written statement.

8. Even if the suit has reached the stage of final arguments,

once the plaintiffs have not questioned the order of impleadment of the petitioner/defendant No.11, his right by virtue of statutory fiction permits him to place on record written statement.

9. In the aforesaid background, the order impugned dated 16th July, 2019 is hereby quashed and set aside.

10. Application Exh.136 stands allowed.

11. Petitioner shall tender his written statement, if not already tendered, within two weeks from today.

12. Hearing of the suit is expedited and same be concluded within a period of six months from today.

13. In the meantime, statement made by counsel for the petitioner that he shall not create third party interest in relation to the property purchased by him vide sale-deed dated 12th February, 2015 is accepted as an undertaking to this Court.

14. The petition stands allowed in above terms.

[NITIN W. SAMBRE, J.]