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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 11160 OF 2019**

Nishant Ahmed Abdul Rahiman and Anr. ....Petitioners

V/s

Chindu Maruti Jadhav and Ors. ....Respondents.

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Mr. Aseem Naphade a/w Mr. Saurabh Utangale i/b Utangale & Co. for the Petitioners.

Mr. Abhishek R. Samant for Respondent Nos. 1 to 17.

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**CORAM: NITIN W. SAMBRE, J.**

**DATE: JANUARY 27, 2022**

P.C.:-

1] Heard.

2] This Petition is by the Plaintiffs to Special Civil Suit No.313 of 2014, questioning the order passed below Exhibit-43-Application moved by the Petitioners/Plaintiffs under Order I Rule 10 of the Civil Procedure Code for impleadment of Defendants.

3] The said Application came to be rejected vide impugned order dated 30/4/2019 passed by the 4<sup>th</sup> Joint Civil Judge, Kalyan. The present Petitioners claim to have purchased the suit property on 11<sup>th</sup>

September, 1986 from Respondent Nos. 2 to 9. The Petitioners/Plaintiffs alleging obstruction of their settled possession by Respondent Nos. 13 and 14 initiated suit for declaration of ownership and also declaration of agreement of 1994 and 1995 as illegal, invalid and not binding in addition to prayer for permanent injunction.

4] In the said suit, the Petitioners/Plaintiffs took out an application under Order-I Rule 10 of the Civil Procedure Code, alleging that during pendency of the aforesaid suit, on 10<sup>th</sup> June, 2018 they are served with suit summons in RCS No.34 of 2014 initiated by the proposed Defendant Nos. 15 to 17 who are Respondents herein in which relief of declaration and injunction was sought. It is claimed that on perusal of the pleadings in the said suit, Petitioners came to know that Defendant Nos. 13 and 14 in this suit have executed Sale Deeds dated 29/04/2007 and 30/04/2007. It is claimed that prior to filing of the present suit in the search report aforesaid transaction was not noticed and, as such, proposed Defendant Nos. 15 to 17 were not impleaded. It is also claimed that from the pleadings in RCS No.34 of 2014, aforesaid fact came to their knowledge, resulting into moving an application-Exhibit-43.

5] The application was resisted by the Respondents/Defendants, alleging that the claim, as has been lodged, is time barred. Petitioners have suppressed material facts from the Court as the earlier suit preferred by the Petitioners being RCS No.34 of 2008 was already dismissed against the proposed Defendants. As such, Trial Court, after considering rival submissions, vide impugned order rejected prayer for impleadment.

6] Mr. Aseem Naphade, learned Counsel for the Petitioners would strenuously urge that the Petitioners/Plaintiffs are *dominus litis* and they have every right to add necessary/appropriate parties to the suit. According to him, cause of action for impleadment is, receipt of suit summons on 10<sup>th</sup> June, 2018 in RCS No.34 of 2014 which is initiated by the proposed Defendants. According to him, the fact that search report which is placed on record does not reflect alleged transaction and execution of Sale Deeds of 2007 between Defendants to the suit and the proposed Defendants could have been inferred by the Trial Court to the benefit of the Petitioners. He would further claim that the court below has committed an error of law in failing to appreciate that

the proposed Defendants are necessary parties to the suit so as to take the suit to its logical end.

7] While countering aforesaid submissions, Counsel for the Respondents would urge that the Petition is liable to be dismissed as the Petitioners have not approached the court below with clean hands, as the observations to that effect are already recorded. It is claimed that after lapse of substantial time, including the knowledge of the Petitioners/Plaintiffs, application is moved and as such, Court below was justified in rejecting the prayer.

8] I have considered the submissions.

9] The fact about filing of the earlier suit being RCS No.34 of 2008 on the file of Civil Judge, Junior Division, Shahapur by the present Petitioners, seeking relief of injunction against the proposed Defendants and dismissal of the said suit on 7<sup>th</sup> January, 2010 is not in dispute.

10] From the aforesaid fact, it is apparent that transaction of 2007

*inter se* between the existing Defendants and proposed Defendants was well within the knowledge of the Petitioners in 2007 itself.

11] Apart from above, Petitioners, even if have come out with the case that for impleadment of proposed Defendants, cause has arisen after receipt of summons in RCS No.34 of 2014 initiated by the proposed Defendants on 10<sup>th</sup> June, 2018, the said contention in the aforesaid backdrop, does not hold any substance. The fact that in 2007, there was transaction *inter se* between the Defendants was well within the knowledge of the Petitioners, could be inferred from the aforesaid observations. Merely because the search report does not reflect the transaction of 2007 will not give any leverage to the Petitioners to seek impleadment of parties at this belated stage, as Petitioners should have been more careful and diligent in pursuing their rights. Trial Court having regard to provisions of Order-II Rule 2 was justified in rejecting the prayer of the Petitioners for impleadment in the background of the foregoing observations. Apart from above, fact remains that the Petitioners but for impleadment, have not come out with any specific pleadings, questioning transactions of 2007 *inter se* between the Defendants. In the aforesaid backdrop, claim of the

Petitioners that the proposed Defendants are necessary or proper parties to the suit cannot be accepted for want of appropriate pleadings.

**12]** As such, the order impugned appears to be quite justified in law. No case for interference is made out. Petition fails and same stands dismissed.

**( NITIN W. SAMBRE, J. )**