

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

50 WRIT PETITION NO. 6620 OF 2014

**AJIT KANTILAL SISODIYA
VERSUS
SURESH GOVINDRAO GAIKWAD**

**WITH
WRIT PETITION NO. 6736 OF 2014**

**1. SATISH BAJARANGLAL TOSHINIWAL
2. MRS. ARCHANA W/O. SATISH TOSHNIWAL
VERSUS
SURESH GOVINDRAO GAIKWAD**

**WITH
WRIT PETITION NO. 6748 OF 2014**

**GOPAL MITHULALJI NAVANDER
VERSUS
SURESH GOVINDRAO GAIKWAD**

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Advocate for Petitioners : Mr. B.A. Darak
Advocate for Respondent : Bharaj Pankaj A.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 11th DECEMBER, 2023

PER COURT :

1. Heard learned counsel for both the sides.
2. In all these petitions facts are almost identical with marginal differences. The petitioners are plaintiffs who have instituted independent suits for specific performance of contract bearing Spl.C.S. No. 36 of 2013, Spl.C.S. No. 34 of 2013 and Spl C.S. No. 35 of 2013, against the respondent / defendant. The petitioners submitted application

Exhibit 20, Exhibit 21 and Exhibit 14 in the respective suits under Order I Rule 10 of Code of Civil Procedure, to implead sons of the respondent, as defendants. The applications are rejected by distinct orders which are challenged in these petitions.

3. The suit for specific performance of contracts are founded on agreement for sale dated 05.10.2007, 07.11.2007 and 21.09.2007 executed by the respondent owner. Three sons of the respondent have already filed RCS No. 387 of 2013 against present respondent for partition and separate possession. They have contended that suit land involved in suits is joint family property. That led the present petitioners to apply under Order I Rule 10 of CPC.

4. Learned counsel submits that the plaintiffs of RCS No. 387 of 2013 are necessary parties. If the suit land in present matter is declared to be joint family property in RCS No. 387 of 2013, then no decree can be passed in the present suits or even if decree is passed that would be unexecutable. The learned Judge erred in only considering the parties to the agreement and Section 19 of Specific Relief Act. He has placed on record plaint of RCS No. 387 of 2013 as well as written statement filed in the present suit, essentially paragraph no. 11.

5. Learned counsel for the respondent supports impugned order. He would submit that there is no privity between the petitioners and the proposed parties. Learned Judge has rightly appreciated the

provisions 19 of Specific Relief Act. There is no perversity or patent illegality in the impugned order.

6. I have considered the submissions of the parties. The agreement was between the petitioner and the respondent. The respondent has filed written statement in the present suit. In paragraph no. 11, it is contended that land Gat No. 76 belongs to joint family and it is ancestral property. The respondent has quoted names of his sons as co-owners. Even there is a reference of RCS No. 387 of 2013 which is filed by the sons against the respondent.

7. Though the contract of the petitioner was not with the other family members of the respondent, in view of the status of the property claimed by the respondent and his sons, I am of the considered view that proposed parties are necessary and proper parties for the adjudication of the present suit.

8. Learned Judge has not taken into account defence of the respondent in paragraph no. 11 of the written statement. The parties to the agreement and the provisions of Section 19 of the Specific Relief Act, are not the only consideration to decide application under Order I Rule 10 of CPC, in given facts and circumstances of the case. The decree if passed in present suit may affect the sons of the respondent. It will be unexecutable.

9. For the reasons stated above impugned orders are unsustainable.

10. The order dated 04.02.2014, passed below Exhibit 20, 21 and 14 in Spl.C.S. No. 36 of 2013, 34 of 2013 and 35 of 2013, respectively are quashed and set aside. The application of the petitioner at Exhibit 20, 21 and 14 stands allowed. The parties are at liberty to request to club the present suit with RCS No. 387 of 2013. All the suits are expedited.

11. Writ Petitions are allowed in above terms.

[SHAILESH P. BRAHME, J.]