

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5165 OF 2023

Gajanan @ Gajendra S/o Hanumant Ronge Petitioner
[Orig. Applicant]

Versus

1. Harischandra s/o Pralhad Dutal
2. Ramu s/o Narsa Ronge Respondents
[Respondent No. 1- Orig.
Plaintiff No. 1 and Respondent
No. 2- Orig. Defendant]

Mr. B.N. Patil, Advocate for the petitioner.
Mr. V.G. Kodale, Advocate for respondent No. 1.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JULY, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned 7th Joint Civil Judge, Junior Division, Latur, below Exhibit-25 in Regular Civil Suit No. 501/2022, thereby rejecting the application filed by the petitioner/third party, under Rule 10 of Order 1 read with Section 151 of Code of Civil Procedure.

2. Respondent No. 1 filed suit for specific performance of contract against respondent No. 2 in respect of suit property i.e. 2 Are plot out of Gat No. 87, total admeasuring 2 Hectare 30

Are, situated at village Murud Akola, District- Latur. Respondent No. 2/defendant appeared and resisted the suit. In the suit application Exhibit-25 is filed by the petitioner claiming that father of the petitioner namely Hanumant was the original owner and possessor of land Gat No. 87, admeasuring 1 Hectare 14 Are. There was dispute between his father and mother and mother had filed maintenance proceeding and suit for partition against the father of the petitioner. For avoiding maintenance, his father nominally executed sale deed of the suit land to the extent of 1 Hectare 14 Are of Gat No. 87 in favour of Respondent No. 2 on 23.06.2003 without consideration. His father had also filed Regular Civil Suit No. 446/2004 for cancellation of sale deeds against Ramu.

3. During the pendency of suit, defendant/respondent No. 2 had executed registered sale deed in favour of petitioner in respect of land Gat No. 87 to the extent of 1 Hectare 9 Are as per the re-conveyance agreement. The suit is subsequently compromised and withdrawn and accordingly the petitioner became owner and possessor of suit land Gat No. 87, admeasuring 1 Hectare 9 Are. It is further claimed that in the present suit, Ramu in his written statement has admitted that

the sale deed which was executed in his favour was nominally executed and it was without consideration. He has also admitted that he has executed re-conveyance agreement in favour of Hanumant on the same day. The petitioner, therefore contended that defendant is not owner and possessor of the suit land and he was not exclusive owner of the suit land. The plaintiff has filed false and bogus agreement of sale deed in his favour. Since, the petitioner has become absolute owner and possessor of the suit land, on the basis of registered sale deed executed by the defendant on 03.02.2005, he is necessary and proper party to the suit. Said application was opposed by the plaintiff. The Trial Court has rejected the application. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocate for respondent No. 1. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied upon by the parties.

5. Admittedly, the suit is filed by respondent No. 1 for specific performance of contract of 2 Are land out of Gat No. 87. The sale deed executed in favour of respondent No. 2 is of the year 2004 and the petitioner claims to have purchased the land in the year 2005. There is nothing on record to show that the

petitioner is the owner of the suit property and/or portion claimed by respondent No. 1 belongs to him.

6. The Trial Court in a well reasoned order has recorded a finding that the suit is filed for specific performance of contract and to decide right, title and interest in the suit property of a stranger to the contract is beyond the scope of the suit for specific performance of contract and the suit cannot be termed into a regular suit. A third party or a stranger to the contract cannot be added as a party as to convert a suit of one character into a suit of different character. Trial Court has also rightly observed that the respondent No. 1/original plaintiff is dominus litus in the present suit and he can not be forced to add party against whom he does not want to fight, unless it is a compulsion of the rule of law. There is no illegality or perversity in the order impugned in the present petition.

7. In Kasturi Vs. Iyyamperumal and Ors., AIR 2005 SC 2813, the Apex Court held that, *'in a suit for specific performance of contract claim of the stranger to the contract to be added as a party/defendant in suit for specific performance of contract for sale, lis between plaintiff and defendant and only be gone into and it was not open to Court to decide whether*

persons/third parties had acquired any title and possession. The suit for specific performance of sale could not be converted into suit for title and possession.'

8. Learned advocate for the petitioner has relied on *Dwarka Prasad Singh and others vs. Harikant Prasad Singh and others*, AIR 1973 SC 655. The issue in that case was in respect of suit for specific performance of contract against the purchaser with notice of prior agreement of sale, the vendor was held to be necessary party. In that case, the plaintiff had alternatively claimed a decree for certain amount consisting of part consideration paid and certain other amount, and in that case vendor expired during the pendency of the appeal and legal representatives were not brought on record. In these facts, it was held that '*Rule 4 of Order 41 could not be invoked and abatement of appeal against vendor was fatal to the entire appeal as either inconsistent and contradictory decrees will have to be passed or proper relief could not be granted in his or his legal representative's absence.*'

Since this decision is rendered in different facts, it is of no help to the petitioner.

9. In *Razia Begum Vs. Sahebzadi Anwar Begum and others*, AIR 1958 SC 886, the Supreme Court was considering the question of addition of parties in suit for declaration status. It was held that '*in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from commercial interest, in the subject-matter of the litigation.*'

In the case in hand, since the petitioner has failed to demonstrate that he has direct interest in the suit property, the contention of the petitioner is not acceptable.

10. There is no illegality or perversity in the order impugned in the writ petition. Writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]