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

WRIT PETITION NO.1532 OF 2023

Ashirwad Nice Developers

... Petitioner

V/s.

Snehalata Ganpat Dalvi & Ors.

... Respondents

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GANESH
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Mr. Rakesh K. Agrawal for the petitioner.

Mr. Shreepad Murthy with Mr. Sahil Wagh i/by Mr.
Abhishek Patil for respondent Nos.2, 4, 6 and 7.

Mr. S.H. Singh i/by Mr. Nilesh L. Makwana for
respondent Nos.10 to 12.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 5, 2023

P.C.:

1. The petitioner applied before the Trial Court for adding him as defendant in a suit seeking declaration that the Will executed by the predecessor of the plaintiff be declared as not binding on the plaintiff and possession of the plaintiff's share over the buildings referred in prayer clause (b-1) along with other reliefs. The Trial Court rejected the application holding that Court Receiver is already appointed in relation to the suit property and no permission of the Court Receiver was obtained before creating rights in favour of the petitioner.

2. Respondent Nos.10 to 12 filed Suit No.4677 of 1998 seeking a declaration that the last Will and Testament of late Ganpat

Ramchandra Dalvi dated 28 March 1991 is not binding on his heir and the estate of Ramchandra Dhondu Dalvi be administered under the orders of the Court. The plaintiffs also prayed for delivery of possession of their share in the suit properties described in prayer clause (b-1). Further reliefs such as payment of monthly amount and rendering of accounts was also made.

3. During the pendency of the suit, the present petitioner filed Chamber Summons No.1470 of 2021 seeking a direction against the plaintiffs to add petitioner as defendant No.10 in the suit. The basis of relief of addition of party was assignment of rights of defendant Nos.1, 1A, 3 and 5 in petitioner's favour. According to the petitioner, in effect the petitioner has purchased 1/2 undivided share in relation to the buildings described in prayer clause (b-1) of the plaint. Therefore, he has substantial interest in the suit property.

4. The Trial Court rejected the application mainly on the ground that the assignment in petitioner's favour is without permission of the Court Receiver and the dispute pertains to the Will and Testament of late Ganpat Ramchandra Dalvi.

5. Learned advocate for the petitioner submitted that the Trial Court was not justified in rejecting the application as permission of the Court Receiver is not required for transfer of property. The petitioner is not disturbing possession and, hence, Court Receiver's permission is not necessary. Moreover, the conduct of the petitioner cannot be construed as mala fide or contumacious and, therefore, the petitioner having assigned approximately 50% of

undivided share in the suit property, they are necessary party in the suit.

6. Per contra, learned advocate for the plaintiff and co-defendants opposed the prayer contending that such assignment by defendant Nos.1, 1A, 3 and 5 amounts to contempt of Court as Court Receiver is appointed over the suit properties and without his permission defendants could not have assigned their rights in favour of the petitioner.

7. In support of their contention, the respondents relied on the judgments in **Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.**, reported in (2010) 7 SCC 417, **Dhanalakshmi & Ors. v. P. Mohan & Ors.** reported in AIR (2007) SC 1062, **Everest Coal Company Pvt. Ltd. v. State of Bihar & Ors.** AIR 1977 SC 2304 and **Sadhuram Bansal v. Pulin Behari Sarkar & Ors.** reported in (1984) 3 SCC 410.

8. I have considered the submissions made on behalf of the parties. It is well settled position of law as regards impleadment of parties to the suit that the plaintiff being *dominus litis* may choose persons against whom he wishes to litigate and the plaintiff cannot be compelled to sue a person against whom he does not seek any relief. However, this general rule is subject to provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 which permits the Court either on an application or on its own motion to issue direction to the plaintiff to implead proper or necessary party whose presence before the Court is necessary in order to enable

the Court to effectively and completely adjudicate upon the issues involved in the suit.

9. It is also well settled that necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed by the Court. A proper party is a person whose presence would enable the Court to completely and effectually adjudicate the issues involved in the suit.

10. The parameters for exercise of power under Order 1 Rule 10 of the Code of Civil Procedure, 1908 have been laid down by the Apex Court in **Vidur Impex & Traders Pvt. Ltd. & Ors. v. Tosh Apartments Pvt. Ltd. & Ors.** reported in (2012) 8 SCC 384. The Apex Court in paragraph 41 has laid down the parameters for exercise of power by the Court under Order 1 Rule 10 of the Code of Civil Procedure, 1908, which are as under:

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly

adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

11. In the facts of the present case, prayer clause (b-1) as sought by the plaintiff is in relation to three buildings in relation to which the plaintiff seeks possession. According to the petitioner, by virtue of consent decree dated 4 July 2018 defendant Nos.1, 1A, 3 & 5 have surrendered their undivided share *qua* suit properties in prayer (b-1) in favour of the petitioner for valuable consideration. Therefore, the petitioner has substantial interest in the suit property.

12. In so far as the contention raised by the respondent that surrender of rights by defendant Nos.1, 1A, 3 and 5 amounts to contempt of Court and, therefore, the petitioner is not entitled to claim any rights based on such consent decree. In this regard, it is

necessary to refer to the judgment in the case of **Thomson Press (India) Ltd. v. Nanani Builders & Investors P. Ltd. & Ors.** reported in (2013) 5 SCC 397 wherein the Apex Court had occasion to consider an application filed by a person who purchased the property in violation of Court's order in a suit for specific performance. Though the purchaser was aware of the order of the Court before purchase, the Supreme Court allowed such purchaser to be added as party-defendant by holding that in a suit for specific performance the Court can order impleadment of a purchaser whose conduct is above board and who filed an application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction, the Court will be fully justified in declining prayer for impleadment.

13. In the facts of the present case, from the reply filed by the plaintiff and other contesting respondents, it is not the case of the plaintiff that the applicant is guilty of contumacious conduct or is beneficiary of clandestine transaction or there is unreasonable delay in filing the application for impleadment.

14. Whether such surrender of rights by defendant Nos.1, 1A, 3 and 5 amounts to contempt of Court needs to be adjudicated in an appropriate proceedings. However, such contention *per se* would not dis-entitle the petitioner from being joined as defendant No.10 in the suit as the defendant purchased substantial interest in the three buildings which is the subject matter of prayer clause (b-1) of the suit. Therefore, in my opinion, the Trial Court was not

justified in rejecting the Chamber Summons filed by the petitioner to add him as defendant No.10 in the suit.

15. In so far as the judgments relied upon by the respondents in **Mumbai International Airport Pvt. Ltd.** (supra), **Dhanalakshmi & Ors.** (supra), **Everest Coal Company Pvt. Ltd.** (supra) and **Sadhuram Bansal** (supra) are concerned, there cannot be any dispute about the legal proposition of law laid down by the Apex Court. However, in the facts of the case, the petitioner has prima facie proved that he has substantial interest in the suit property and, therefore, grant of relief of possession would affect legal rights over the suit property. Therefore, the judgments relied upon by the respondents are of no help to the respondents. Hence, following order:

- a) Impugned order dated 24 November 2022 passed by the Judge, City Civil Court, Greater Mumbai (Court No.1) in Chamber Summons No.1470 of 2021 in Suit No.8447 of 1998 is quashed and set aside;
- b) Chamber Summons No.1470 of 2021 in Suit No.8447 of 1998 is allowed;

16. The writ petition accordingly stands disposed of. No costs.

(AMIT BORKAR, J.)