



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8181 OF 2017

Bebanco Developers Limited Petitioner
Vs.
Balasaheb Bapusaheb Shinde and Ors. Respondents

Mr. Kishor Patil i/b Mr. Shrikant D. Patil for the Petitioner.
Mr. N. C. Walimbe for Respondent Nos.1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 19 AUGUST 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 13/6/2017 rejecting the petitioners application seeking impleadment by invoking the provisions of Order 1 Rule 10 of CPC.

3. Special Summary Civil Suit No.115/2014 was instituted by respondent Nos.1 to 3-plaintiffs seeking recovery of the purchase consideration which had remained unpaid pursuant to the sale deed dated 15/6/2010 executed by respondent Nos.1 to 3 in favour of respondent No.4-Defendant.

4. The plaintiff sought to create a charge on the property in respect of the amount claimed by placing reliance on the provisions of section 55(4)(d) of The Transfer of Property Act for the unpaid amount of purchase money. During the pendency of this proceedings the property came to be sold to the present petitioner and as such an application was filed by the present petitioner for being impleaded as party to the proceedings which came to be rejected by the trial Court giving rise to the present petition.

5. Learned counsel for the petitioner submits that the suit in question was a suit for recovery of the amount. However, as relief of creation of charge is prayed, the rights of the petitioner are directly affected by the outcome of the proceedings. He would further submit that the admitted position is that during the pendency of the proceedings the property in respect of which the unpaid amount of purchase money is claimed has been purchased by the present petitioner and as such if the original defendant loses interest in the proceedings the same would result into charge being created on the property of which he is presently the owner. He would further submit that the trial Court has rejected the application by considering that the sale deed was executed without the authority or permission of the Court for such a sale and that transferee is bound by the decree inasmuch as he is a party to the suit. He would submit that the trial Court failed to consider that suit was for recovery of the amount and the only reason why the petitioner seeks impleadment is by reason of the prayer seeking

creation of the charge on the property. As such he would contend that he is necessary party. He draws support from the decision of the Apex Court in *Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Ors. (2013) 5 Supreme Court Cases 397* and the decision of this Court in the case of *Rakesh Rajendrakumar Agarwal vs. Madhukar Atmaram Bhoir, Writ Petition No.12151/2022*.

6. *Per contra*, learned counsel appearing for the respondent submits that 50% of the unpaid amount was deposited in the Court and balance 50% has remained to be paid. He would further submit that considering the provisions of section 52 of the Transfer of Property Act, the petitioner is a transferee pendente lite and is governed by the decision passed in the Suit. He would urge that if the petitioner is directed to be impleaded he may be put to conditions.

7. Considered the submissions and perused the papers.

8. The suit in question has been instituted seeking recovery of unpaid amount of purchase money. The petitioner would not have been a necessary party if the only issue adjudicated was whether there is any purchase money which has remained unpaid upon sale of the property. In the present case the admitted position is that during the pendency of the proceedings the property which was the subject matter of the sale in the year 2010 has now been sold to the petitioner. The prayers in the suit seek

creation of charge upon the suit property upon default of payment of purchase money and as such the rights of the petitioner being subsequent transferee is directly affected. It is now settled by catena of decisions that what makes a person a necessary party is that he should have direct and substantial interest in the subject matter of the proceedings and the outcome should directly affect his rights. In the present case, in event the defendant, upon a decree being passed fails to comply with the same, the non-compliance will result into charge being created upon the property in respect of which the petitioner has already parted with valuable consideration and as such he would be foisted with the liability of the defendant. The interest of the petitioner being directly affected by the outcome of the proceedings, in my view, the petitioner is a necessary party. The trial Court has rejected the application by considering that there was no permission sought while effecting the sale deed during pendency of the proceedings. The trial Court took into consideration the provisions of section 52 of the Transfer of Property Act, however failed to notice that application has to be decided on the touchstone of Order 1 Rule 10 of CPC read with Order 22 Rule 10 of CPC. The submission of learned counsel for the respondent that the petitioner be subject to terms cannot be considered as there is no proposition of law which can support the said submission of learned counsel for the respondent. The only issue which was required to be considered by this Court is whether the petitioner is a necessary party to the proceedings. In that context the decision which has been relied upon by the learned counsel for the petitioner in the case of *Thomson Press (India)*

Limited (supra) is directly applicable. This Court has considered the decision of the Apex Court in the case of ***Rakesh Rajendrakumar Agarwal (supra)*** and permitted impleadment of the party.

9. In light of discussion above, the impugned order dated 13/6/2016 is clearly unsustainable and is quashed and set aside. In view of the impugned order quashed and set aside, the said application filed below Exhibit 89 dated 30/11/2016 stands allowed. Writ petition succeeds and stands allowed.

SHARMILA U. DESHMUKH, J.