

AGK

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

**WRIT PETITION NO.1868 OF 2023
WITH
WRIT PETITION NO.1869 OF 2023**

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Shamshuddin Hussain Shaikh

... Petitioner

V/s.

GP. Capt. Satish Hanumantrao
Kenjale & Ors.

... Respondents

Mr. Vikram V. Pai for the petitioner.

Mr. Chetan G. Patil for respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. The petitioner challenges order passed by the Trial Court allowing application for amendment filed before commencement of trial to incorporate pleadings regarding sell of suit property during pendency of the suit.

2. Respondent Nos.1 and 2/original plaintiffs filed Regular Civil Suit No.1436 of 2020 seeking *inter alia* relief of delivery of possession of the suit property. The plaintiff prayed for further relief that agreement of assignment dated 27 January 2006 executed between father of the plaintiff and defendant No.1 be declared as null and void.

3. Defendant No.1 contested the suit by filing written statement.

4. During pendency of the suit, the defendant executed sale deed of the suit property in favour of third parties. The petitioner, therefore, filed two applications: one for amendment of plaint to incorporate pleadings regarding sell of suit property in favour of third party; and second, application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to add third parties as defendants to the suit.

5. The Trial Court by the impugned order allowed both the applications. Defendant No.1 has, therefore, filed present two writ petitions challenging both the orders.

6. According to the learned advocate for the petitioner, amendment is not necessary to decide real controversy between the parties and according to him third parties are not necessary parties to the suit.

7. It is not in dispute that the suit was filed on 14 December 2020. The sale deeds in question are registered on 10 November 2021. Therefore, it is clear that third party rights are created during the pendency of the suit. The application for amendment is filed before commencement of trial. Therefore, the application to incorporate pleadings in relation to the sale of suit property in favour of third party cannot be said to be not necessary to decide real controversy between the parties. Therefore, the Trial Court has rightly allowed the application for amendment.

8. In so far as application under Order 1 Rule 10 passed by the

Trial Court is concerned, the plaintiff being *dominus litis*, it is the plaintiff's discretion who he wants to make party. The proposed defendants being transferees *pendente lite* can be allowed to be added as party in a suit for possession and for declaration of assignment deed as void. Therefore, the orders passed by the Trial Court do not suffer from any legal infirmity.

9. Both the writ petitions stand dismissed. No costs.

10. Considering the facts of the case, hearing of the suit is expedited.

11. It is made clear that the observations made in the present order shall not influence the Trial Court while deciding the suit on merits.

(AMIT BORKAR, J.)