

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO . 9738 OF 2023

Ibrahimsaheb Amirsahab Kokani Decd. Thru
LHRS and Ors.

...Petitioners

Versus

Suraiya Sultan Kokani & Ors.

...Respondents

Mr. A. S. Khandeparkar, Senior Advocate i/b Khandeparkar &
Associates for the Petitioners.

Mr. R D. Soni i/b Ram & Co for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 8, 2023

P. C. :

1. The challenge in the petition is to the orders passed below Exhibit 206, 207, 208, 209, 210 and 217 allowing the plaintiff's application seeking deletion of defendants Nos.1 and 70 (Survey Nos.19/1 and 19/3, ad-measuring area 0H-39R), 48, 50, 51, 52(Survey No.19/3), 64 (survey No.19/3), 66 (survey No.19/3) and 71 and 72 (survey No.19/3).

2. Special Case No.328/2008 was instituted by the plaintiff against various defendants seeking partition and separate possession of the suit properties and for setting aside of the sale deed dated 23/7/2007. During the pendency of this proceeding applications came to be filed seeking deletion of defendants and properties in lieu of compromise which has been entered into between the plaintiff and defendant Nos.1, 70, 48, 50, 51, 52, 64, 66, 71 and 72.

3. Heard Mr. A. S. Khandeparkar, learned senior advocate for the Petitioners and Mr. R D. Soni, learned counsel for the respondents.

4. Mr. Khandeparkar, learned senior advocate for the petitioners submits that the petitioners are the original defendant Nos.25-36 and it is their case that properties in respect of which deletion is sought are the self acquired properties of their ancestors. He would further submit that by the impugned order not only the names of the concerned defendants have been deleted but also the suit properties have been permitted to be deleted. He would contend

that the order prejudices the rights of the petitioners as and when a claim will be raised in respect of the properties in appropriate forum.

5. *Per contra*, Mr. Soni, learned counsel appearing for respondent Nos. 7 and 8 submits that the plaintiffs had no objection for deletion of the parties and properties and the petitioner being defendant Nos.25 to 36 cannot object to the same. He would further contend that it is disputed that the properties in question are self acquired properties of the petitioners.

6. Considered the submissions and perused the papers.

7. Special Civil Suit No.328/2008 have been instituted by the branch of one Shaikh Saheb and the defendants are from the branch of Dawood Saheb, who is the brother of Shaikh Saheb. At this stage, it is not necessary to go into the controversy whether properties are self acquired properties for the reason that by the impugned orders the trial Court has permitted the plaintiffs to

delete defendants with whom compromise has been entered into as well as suit properties in respect of which compromise has been entered into. It is settled that the plaintiff is the *dominus litis* and cannot be forced to proceed against the parties against whom he does not wish to claim any relief. In the present case, the power has been exercised under the provisions of Order 1 Rule 10(2) of the CPC for the purpose of deleting the parties. The compromise deed entered into between the plaintiff and defendants is not binding upon the petitioners, who are not party to the compromise. That apart, there is no compromise decree which has been entered into by the parties and the trial Court has merely permitted deletion of the parties and properties. That being so, the right of the petitioners who are not parties to the compromise is not affected by deletion of the parties or the concerned suit properties.

8. In that view of the matter, there is no interference warranted in the impugned order. Writ petition is dismissed.

(SHARMILA U. DESHMUKH, J.)