

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

WRIT PETITION NO. 15528 OF 2022

Manish Chokshi

....Petitioner

Versus

Ashaben Amrilal Jain & Anr.

....Respondents

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Mr. Raj Patel a/w Niket Jani i/b Vigil Juris for the Petitioner

Mr. Shravan M. Vyas for the Respondent No. 1.

Mr. D. R. Bapat for the Respondent No. 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28 MARCH 2023.

P.C. :

1. Rule. Rule made returnable forthwith. By consent of both learned counsels heard finally at the admission stage.

2. It is contention of learned counsel for the petitioner that petitioner is co-owner of suit property. The petitioner has purchased right in the suit property in the year 2018 i.e. 12.5% share from respondent no.1. The respondent no.1 is co-owner of the suit property. He has filed the suit against the respondent no. 2 in the year 2008, when petitioner purchased the suit property at that time

petitioner was not aware about the suit filed by the respondent no. 1 against the respondent no. 2 for eviction. After coming to know about this fact petitioner filed an application for joining him as a party in the said suit proceedings, but the trial court rejected the said application. Thereafter, appeal was preferred against the said order the appellate bench of Small Causes Court rejected the said application. The said order is under challenge by way of this writ petition.

3. Learned counsel further submits that when petitioner is the co-owner of the suit property, the petitioner has right to join as a party in the suit proceedings but the appellate bench has not considered this fact.

4. Learned counsel further submits that the respondent no. 1 is stating that he had consent of other co-owners for filing the suit but no such consent was produced before the trial court. Hence requested to set aside the impugned order. He relied on *Mangal Builders & Enterprises Limited & Anr. vs. Williamson Magor and Company Ltd. & Anr. 2017 SCC OnLine SC 2133*.

5. Learned counsel for the respondent no. 1 submits that the suit for eviction against the respondent no. 2 is filed in the year 2008 in the said suit the evidence of plaintiff i.e. respondent no. 1 (herein)

and respondent no. 2 is completed in the said proceedings. The petitioner had filed affidavit of evidence on behalf of the respondent no. 2. Thereafter, the petitioner filed application for joining him as a necessary party.

6. Learned counsel further submits that the petitioner has purchased share of 12.5% in the suit property in the year 2018 and the suit was filed in the year 2008. When suit was filed at that time there was deemed consent of all the other co-owner to file the suit and on that basis suit was filed, the impugned order passed by the appellate bench of Small Causes Court is legal and valid and no interference is require in it. He relied on *Kanaklata Das and Ors. vs. Naba Kumar Das and Ors. in Civil Appeal No. 3018 of 2008 SC*.

7. It is contention of learned counsel for the respondent no. 2 that in cross examination specific question was put to the respondent no. 1, to that question respondent no. 1 answered that no consent of other co-owner is required for filing the suit.

8. I have heard all learned counsels, while passing the impugned order the appellate bench has observed that one co-owner is alone competent to maintain suit and other all co-owners are not necessary party for just decision of the suit. In my view, admittedly

the suit was filed in year 2008 against the respondent no. 2 for eviction, at that time there were total four co-owners. In the year 2018 the petitioner has purchased the share of 12.5% in the suit property and become co-owner. It is contention of the learned counsel for the petitioner that he became the co-owner of suit property and no consent is produced before the trial court to show that other co-owners had consent to file the suit. Hence, he can be joined as a party.

9. In my view, when suit was filed other three co-owners did not file any application before the trial court showing that they had no consent for filing the eviction suit not they have made any application for opposing the said suit. After purchasing the share the petitioner filed affidavit of evidence on behalf of the defendant no.2 to support his case and thereafter filed an application to joint him as a party. When the evidence of plaintiff and defendants are already completed and the petitioner has purchased the 12.5% share in suit property in the year 2018. As per the view of Hon'ble Apex Court in the case of Kanaklata Das (supra) the petitioner is not necessary party in the suit. Learned counsel for the petitioner submits that Hon'ble Apex Court in the case *Sandip Kumar Bafna vs. State of Maharashtra & Anr. (2014)*

16 SCC 623 have given the guidelines in para 19 of the said judgment. In my view, the facts of cited case filed by the learned counsel for the petitioner and facts in present case are different as in the cited case. The co-owner was already added as a defendant and in the present case after 10 years of filing the suit and after completing the evidence plaintiff and defendant, co-owner wants to join him as a party. Moreover, the petitioner has a small share of 12.5% only and there are other three co-owners though their consent is not produced on record but they have not objected about the suit it shows that they have deemed consent for filing the suit. In view of above, I do not find any infirmity in the order passed by the appellate bench and I pass following order.

ORDER

- i. Writ petition is dismissed. No order as to cost.

(SHIVKUMAR DIGE, J.)