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

WRIT PETITION NO.12539 OF 2023

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Pankaj Unit No.1 Housing Development
Company Private Limited & Ors. ... Petitioners

V/s.

Beeline Impex Private Limited & Ors. ... Respondents

Mr. Vaibhav Sugdare with Mr. Nilesh Tated with Mr.
Danish Qureshi i/by Mahimtura & Company for the
petitioners.

Mr. Darshit K. Jain with Mr. Udit Raghuwanshi i/by Ms.
Divya A. Jain for respondent Nos.1 &2.

Mr. J. Chandran i/by Mr. Pranav Nair for the
respondent for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 1, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners are challenging order dated 22nd August 2023 passed by the Trial Court rejecting petitioners' application for impleadment under Order 1 Rule 10 of the Civil Procedure Code, 1908.

2. Respondent Nos.1 and 2, plaintiffs in S.C. Suit No.1235 of 2009 filed against respondent No.3 seeking a relief to declare tripartite settlement dated 17th April 1986 along with the

declaration dated 28th February 1994 to be ineffective and not binding on the plaintiffs. Consequential injunction not to disturb their possession over the suit property and from interfering/disturbing existing boundary as shown in plaint at Exhibit-A without due process of law is also sought.

3. During pendency of the suit, the petitioners on 6th February 2018 purchased a property described in Annexure-A to the said conveyance. According to the petitioners, the description of property in Annexure-A indicates that it is the part of the suit property. According to the petitioners, therefore, granting reliefs in terms of prayer clauses (a) to (c) in the plaint would prejudicially affect legal rights of the petitioners over the conveyed portion of immovable property purchased by the petitioners. They, therefore, filed application before the Trial Court.

4. The Trial Court, by the impugned order, rejected the application mainly on following grounds:

(i) The plaintiffs being dominus litis, nobody can be permitted to be impleaded as defendants against the wish of plaintiffs.

(ii) The petitioners do not have direct interest in the action or lis of plaintiffs

(iii) If the petitioners have independent interest adverse to that of plaintiffs or defendants then they are entitled to file separate suit.

(iv) Presence of the petitioners is not required or necessary

for determination of real dispute between the plaintiffs and defendants

(v) The petitioners are neither necessary nor proper parties for enabling the Court for effectually and completely adjudicate upon questions involved in the suit.

5. The petitioners have, therefore, filed present writ petition challenging the order refusing to permit petitioners to be impleaded as party defendants in the suit.

6. Learned advocate for the petitioners invited my attention to second schedule of the conveyance executed in favour of the petitioners to urge that Annexure-A of the conveyance provides for exact location of a property purchased by the petitioner. Part of the property purchased by the petitioners intersects part of the suit property. According to the petitioners, boundaries fixed by settlement agreement dated 17th April 1986 and settlement agreement dated 17 April 1986 if modified in the suit, it will prejudicially effect on the ownership rights of the petitioners. According to the petitioners, the relief of injunction in terms of prayer clauses (b) and (c) will have effect of restraining petitioners from entering their property and, therefore, they are necessary party to the suit. In support of their submission, they relied on following judgments:

(i) **Saila Bala Dassi vs. Nirmala Sundari Dassi and Another** reported in 1958 SCR 1287 : AIR 1958 SC 394.

(ii) **Amit Kumar Shaw and Another vs. Farida Khatoon and Another** reported in (2005) 11 SCC 403.

(iii) **A. Nawab John and Others vs. V. N. Subramaniyam** reported in (2012) 7 SCC 738.

(iv) **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others** reported in (2010) 7 SCC 417.

7. Per contra, learned advocate for the plaintiffs submitted that none of the part of the suit property is purchased by the petitioners. The conveyance in favour of the petitioners is in relation to entirely different property. The Annexure-A to the conveyance is not a drawing to scale and, therefore, no reliance can be placed on such map. Neither petitioners' predecessor-in-title nor the petitioners can claim any right over the suit property as part of the suit property was never conveyed to predecessor of the petitioners nor to the petitioners by their predecessor. The petitioners are not in possession of the part of the suit property as alleged. The petitioners had knowledge of the suit right from inception of suit but intervention application is filed only in 2020. The petitioners were claiming reversionary rights from 1981, 2006 and 2007. The actual conveyance was executed in 2018. Allowing petitioners to be added as party would unnecessarily complicate the suit and embarrass the trial of the suit. The plaintiffs being dominus litis, it is the choice of the plaintiffs against whom they want to proceed.

8. Rival contentions fall for adjudication.

9. The crux of the issue involved in the writ petition is as to whether the petitioners are necessary party or not. The parameters

for adjudication as to whether a person is necessary party or not have been laid down by the Apex Court in the case of **Vidur Impex and Traders Private Limited and Others vs. Tosh Apartments Private Limited and Others** reported in (2012) 8 SCC 384. In the facts of the case, the suit was for specific performance and, therefore, section 19(2) of the Specific Relief Act, 1963 influences adjudication on the point of necessary party. However, the Apex Court, in paragraph Nos.41, has laid down broad principles which govern the application for impleadment 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.”

10. Considering the relief prayed, it needs to be noted that though relief (b) and (c) are relief of injunction which are personal in nature, however relief (a) is in relation to declaration of settlement agreement dated 17th April 1986 and *declaration dated* 28th February 1994. To grant such declaration, it is necessary to ascertain the nature and exact location of suit property. If part of the suit property is owned by the petitioners, without adding petitioners as party defendants, such declaration cannot be granted by the Court. However, if it is shown that petitioners have purchased entirely different property unconnected with the suit property, the refusal of relief need not be interfered.

11. To ascertain whether the petitioners have purchased part of the suit property, it is necessary to scrutinize map described as “Annexure-A” in the conveyance in favour of the petitioners. I have scrutinised the map annexed along with the conveyance in favour of the petitioners and Annexure-A which is made part of the plaint. In my opinion, part of the suit property *prima facie* forms part of

property purchased by the petitioners. If so, grant of declaration in terms of prayer clause (a) in the suit without joining petitioners would prejudicially affect petitioners' rights over suit property. Moreover, such declaration cannot be granted without adding all persons who claim ownership rights over the part of the suit property. On perusal of maps produced on record declaration claimed in paragraph (a) of prayers has effect of changing of boundaries settled by agreement dated 17th April 1986 and *declaration dated 28th February 1994*, hence joint owner of the suit property is a necessary party, without whose presence effective decree cannot be passed by the Court.

12. However, it must be made clear that while recording aforesaid findings regarding ownership, I have made only prima facie adjudication about the exact location of the portion purchased by the petitioners and conferment of ownership rights of the petitioners by conveyance of 2018. It shall be open for the Trial Court to adjudicate on this issue during trial after granting parties opportunity to lead evidence.

13. Learned advocate for the respondents submitted that the portion purchased by the petitioners is not the subject matter of the conveyance deed executed in favour of petitioners' predecessor-in-title so also in favour of the petitioners. However, on prima facie consideration of the agreement executed in favour of petitioners' predecessors and petitioners, I am of the prima facie view that part of the suit property appears to have been conveyed to the petitioners by the respective conveyances.

14. Contention regarding Annexure-A being not as per scale needs to be adjudicated by the Trial Court by granting opportunity to both parties to lead oral evidence.

15. The contention of the learned advocate for the *plaintiffs (respondent Nos.1 and 2 herein)* is that petitioners are not in possession. Such contention will have relevance while considering prayer clauses (b) and (c) of the suit. However, for considering prayer clause (a) in the suit, whether petitioners are in possession or not is of no relevance.

16. In so far as the delay in filing application for intervention despite petitioners had knowledge of pendency of suit from 2009 is concerned, it is undisputed that the trial is yet to commence. Therefore, the principle of undue delay in filing application for intervention will not be applicable as intervention will not delay the trial of the suit.

17. The argument regarding *plaintiffs (respondent Nos.1 and 2 herein)* being dominus litis is concerned, in my opinion, there cannot be dispute about the legal preposition. However, in the facts of the case as held earlier, considering relief of declaration prayed in prayer clause (a) of the plaint, the status of the petitioners would be that of joint owner in the part of the suit property, no effective decree can be passed without adding petitioners as defendants in the suit.

18. For the reasons stated above, in my opinion, the Trial Court committed error of jurisdiction by failing to exercise jurisdiction power vested under Order 1 Rule 10 of the Civil Procedure Code,

1908. Hence, the impugned order deserves to be quashed and set aside.

19. Hence, following order:

a) The impugned order dated 22nd August 2023 passed by the City Civil Judge at Dindoshi, Borivali Division in the Chamber Summons No.1410 of 2022 in Suit No.1235 of 2009 is quashed and set aside.

b) It is made clear that the observations made in the order regarding exact location of the suit property, property conveyed in favour of the petitioners and the title of the petitioners needs to be conclusively adjudicated by the Trial Court after giving both parties opportunity to lead evidence.

20. The writ petition stands disposed of in above terms. No costs.

21. At the request made by the learned advocate for the respondents, effect of the order is stayed for period of four weeks from today on the condition that the proceedings in the suit shall not be proceeded without appearance of the petitioners.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 6th November 2023. The corrections in paragraphs 10, 11, 15 and 17 are shown in italicize.