

VRJ

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

WRIT PETITION NO.14969 OF 2023

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Subash Gopi

... Petitioner

V/s.

Saras Gopi Alias K. Saraswathi Amma

Alias Saraswathi Gopalkrishnan & Ors.

... Respondents

Mr. Venkatesh Dhond, Senior Advocate with Ms. Karishma Rao, Mr. Rushabh Vidyarthi, Ms. Shreni Shetty, Ms. Meerakshi Pahuja i/by ANB Legal for the petitioner.

Mr. Vishal Maheshwari with Ms. Shrishty Panjabi i/by VM Legal for respondent No.1.

Mr. Ankit Lohia with Mr. Ameya Gokhale, Ms. Kriti Kalyani, Mr. Siddhant Marathe and Ms. Aditi Bhat i/by M/s. Shardul Amarchand Mangaldas & Co. for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 4, 2023

P.C.:

1. The writ petition arises out of rejection of notice of motion seeking direction against the plaintiff to add petitioner as necessary party to the suit.

2. Respondent No.2 has filed S.C. Suit No.1233 of 2017 seeking a relief that the plaintiff be declared as owner of the suit property. The relationship between the plaintiff and defendant No.1 is that

of daughter and mother. During pendency of the suit, the Trial Court passed various orders. Two orders dated 7th July 2023 and 10th July 2023 were subject matter of Writ Petition No.11346 of 2023.

3. This Court, by order dated 13th September 2023, inter alia directed the Trial Court to decide issue of voluntariness of settlement agreement dated 21st April 2023 after granting parties to the suit opportunity to produce material in support of their contentions.

4. The petitioner who claims to be Power of Attorney holder and son of defendant No.1 filed notice of motion to implead him as necessary party in exercise of power under Order 1 Rule 10(2) of the Civil Procedure Code, 1908. The Trial Court, by the impugned order, referred material produced by the parties. However, without assigning reasons as to what factors weighed with the Trial Court to hold that the settlement agreement dated 21st April 2023 is signed voluntarily by defendant No.1 recorded a finding to that effect.

5. In the peculiar facts of the case considering allegations regarding mental capacity of defendant No.1, it was necessary for the Trial Court to assign detailed reasons to record a finding as to whether defendant No.1 signed agreement dated 21st April 2023 voluntarily. Without assigning such reasons, it is not possible for the superior Court to scrutinize decision making process before arriving at finding regarding voluntariness of the agreement.

6. Moreover, in the context of application filed by the petitioner

under Order 1 Rule 10 of the Civil Procedure Code, 1908, such decision on the voluntariness of agreement is crucial. If the Trial Court comes to the conclusion based on material on record that on the date of agreement i.e. 21st April 2023, defendant No.1 had voluntarily executed the agreement, it will have material effect on the right claimed by the petitioner. Therefore, the decision making process to arrive at conclusion regarding voluntariness of agreement, material impact on the right of the petitioner to claim himself as necessary party. Without detailed reasons, the Trial Court could not have entered into the aspect of issue as to whether the petitioner was necessary party to the suit or not. Therefore, in my opinion, the impugned order to the extent it records a finding that defendant No.1 voluntarily entered into agreement dated 21st April 2023 and it rejects petitioner's application under Order 1 Rule 10 of the Civil Procedure Code, 1908, holding him to be not necessary party needs to be quashed and set aside.

7. Hence, following order:

- a) The impugned order dated 10th October 2023 to the extent it records a finding that defendant No.1 voluntarily entered into agreement of settlement dated 21st April 2023 and rejection of application to implead petitioner as necessary party to the suit are quashed and set aside.
- b) The notice of motion below Exhibit-33 is restored to the file of the Trial Court.
- c) The Trial Court shall first decide the issue of voluntariness of agreement dated 21st April 2023 by

assigning detailed reasons and, thereafter, the Trial Court based on such finding shall decide issue as to whether petitioner is a necessary party to the suit or not.

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

(AMIT BORKAR, J.)