

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.
MISC. CIVIL APPLICATION (REVIEW) NO.557 OF 2022
IN
SECOND APPEAL NO.519 OF 2017(D)
Tikaram s/o Jairam Bhure and another
vs.
Gajanan Jairam Bhure and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S.Ghate, Advocate for applicants.
Shri R.M.Bhangde, Advocate for non-applicant no.2.

CORAM :- A.S.CHANDURKAR, J.
DATE :- 23rd JUNE, 2023

The applicants who are defendant nos.6 and 7 in R.C.S.No.59 of 2005 that was filed by the non-applicant no.2 herein-plaintiff seek review of the judgment dated 10.09.2018 in Second Appeal No. 519 of 2017 on the ground that though the applicants were arrayed as defendant nos.6 and 7 in the suit for specific performance filed by the plaintiff, they were not impleaded as respondents in R.C.A.No.106 of 2012 that was filed by the plaintiff challenging the decree for refund of earnest amount.

2. It is submitted by the learned counsel for the applicants that as the applicants had been impleaded as defendant nos. 6 and 7 in the suit for specific performance, they ought to have been impleaded in the appeal that was preferred by the original plaintiff while challenging the decree for refund of earnest amount. Similarly even in the Second Appeal the applicants were not impleaded as respondents when the decree for specific performance passed against his brother -Gajanan came to be challenged. On this basis, it is submitted that the applicants were necessary parties for being joined and heard in the proceedings. Since the same has not been done, the judgment in Second Appeal No.519 of 2017 deserves to be reviewed.

3. The learned counsel for the non-applicant no.2- original plaintiff submits that though the applicants were impleaded as defendant nos. 6 and 7 in the suit for specific performance, they were not impleaded as respondents in R.C.A.No.106 of 2012. They were also not impleaded as respondents in Second Appeal No.519/2017. According to him when the appeal was pending before the District Court, the defendants amongst themselves which included the applicants herein entered into compromise decree for partition in R.C.S.No.64 of 2005 that was filed for the said purpose. Gat No.508/5 admeasuring 3 H 57 R was allotted to the defendant nos. 1, 6 and 7. Though the defendant no.1 entered into an agreement dated 05.01.2005 for selling the entire land admeasuring 3 H 57 R, the appellate Court has passed decree to the extent of share of the defendant no.1 in respect of land admeasuring 1 H 19 R. Hence no prejudice is caused to the applicants. They are not adversely affected by the decree for specific performance since their shares in the land have not been affected. Placing reliance on the decision in *Kasturi vs. Iyyamperumal and others [(2005) 6 SCC 733]*, it is submitted that after the decree for partition, the applicants are not necessary parties.

4. I have heard the learned counsel for the parties. The record indicates that though the present applicants were impleaded as defendant nos.6 and 7 in the suit for specific performance being R.C.S.No. 59 of 2005 which came to be partly decreed by directing refund of earnest amount, the names of the respondent nos. 2 to 5 came to be deleted in First Appeal No.36 of 2010. The present applicants were respondent nos. 6 and 7 in the appeal and their names continued in the array of parties. It is not in dispute that when the proceedings were transferred from the High Court to the District Court in view of enhancement of its pecuniary jurisdiction, the applicants were not added as the respondents in the said appeal. The appellate Court decreed the suit to the extent of land admeasuring 1 H 19 R

being the share of defendant no.1 alone. The applicants were also not parties to Second Appeal No.519 of 2017 as respondents. Despite aforesaid, it would be necessary to consider whether the review jurisdiction deserves to be exercised on the ground that they were not arrayed as respondents in the appeal.

5. Though the agreement dated 05.01.2005 was for land admeasuring 3 H 57 R, the appellate Court after noticing the compromise decree passed in R.C.S.No.64 of 2005 granted limited relief to the original plaintiff. His suit for specific performance was decreed only to the extent of share of defendant no.1 being 1 H 19 R who alone had signed the agreement. This was after noticing that Gat No.508/5 admeasuring 3H 57 R had been given to the share of defendant nos. 1, 6 and 7. As noted above, the present applicants were defendant nos. 6 and 7 in the suit for specific performance. It is thus clear that the decree for specific performance is passed only against the defendant no.1 with regard to his share in the said land. This aspect has been noted in paragraph 5 of the judgment under review. By virtue of the limited relief granted to the plaintiff which has been accepted by the plaintiff, it is clear that the share of the present applicants from Gat No.508/5 is not affected. The said decree has been passed only against the signatory of the agreement dated 05.01.2005 to the extent of the share of defendant no.1.

6. The decision in *Kasturi* (supra) indicates the difference between a proper party and necessary party. In the present facts, it could be said that initially the applicants had been added as defendant nos. 6 and 7. With the passing of the decree for partition and subsequent decree for specific performance only to the extent of defendant no.1, the present applicants -defendant nos. 6 and 7 ceased to be necessary parties in the suit for specific performance. Since the decree passed by the appellate Court is confirmed in Second Appeal No.519 of 2017 and it causes no legal prejudice to the applicants nor does it deprive them

of their share from Gat No.508/5, I do not find any reason to invoke review jurisdiction. The miscellaneous civil application is therefore rejected. No costs.

(A.S.CHANDURKAR, J.)

Andurkar.