

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4399 OF 2018

Laxminarayan S/o Dagadulal Somani
(Dead)

- 1(a) Nandkishor Laxminarayan Somani,
Aged 42 years,
- 1(b) Sudhir Laxminarayan Somani,
Aged 46 years,
- 1(c) Gopal Laxminarayan Somani,
Aged 44 years,
1(a) to 1(c) R/o Ansingh, Tq. & Dist.
Washim
- 1(d) Surekha Kishorkumar Chandak
Aged 54 years R/o Tq. Karanja Dist.
Washim
- 1(e) Sujata W/o Omprakash Rathi,
Aged 50 years, R/o Ansingh, Tq. &
Dist. Washim
- 1(f) Shushma w/o Radheshyam Panpaliya
Aged 48 years, R/o Samrtha Apt,
Snehal Nagar, Sevagram Road, Wardha

...Petitioners

// VERSUS //

- 1. Ashok S/o Dagadulal Somani,
Aged 61 years, Occ. Medical Stores
R/o Nitin Medical Stores, Main Road,
Gondia, Dist. Gondia
- 2. Vijay Dagadulal Somani
Aged about 63 years, Occ. Doctor
Professor Colony, Washim District
Washim
- 3 Savitribai W/o Shrichand Ade,

- Aged about Major, Occ. Private
4. Dharmabai W/o Govardhan Ade,
Aged about Major, Occ. Private
 5. Badalbai W/o Shama Chavhan,
Aged about Major, Occ. Private
 6. Shilabai W/o Sudhakar Rathod
Aged about Major, occ. Private
 7. Ranjanabai W/o Vikal Rathod,
Aged about Major, Occ. Private
 8. Yamunabai W/o Kailas Rathod,
Aged about Major, Occ. Private
- Respondent Nos. 3 to 8 all resident of
Waghjali (Majare), Th-Pusad, Dist.
Yavatmal

... Respondents

Shri N.R.Saboo, Advocate for the petitioners.

Shri A.V.Bhide, Advocate for the respondent no. 1.

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 15th March, 2018 passed by the 4th Joint Civil Judge, Junior Division Washim, rejecting the application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (in short hereinafter referred as “CPC”).

3. An application under Order 1 Rule 10(2) of CPC was moved by the petitioner/plaintiff to join subsequent purchaser of the suit land as

a party. While rejecting the said application Exhibit 56, the Court has recorded the reasons in paragraph 9 of the order which reads thus:

“9. The plaintiff failed to show why proposed defendants are necessary parties to the suit. Merely proposed defendants are transferred suit property interest, it does not give rise to add them as necessary party to the suit. It seems that the right, title, interest of proposed defendants is not appears in the present suit. Thus, in instant matter, controversy between plaintiff, defendants and proposed defendants, right and interest of suit property, if any, presence of proposed defendants is not seems to be just, necessary and expedient, as defendants to the suit, which would enable this Court to effectually and completely adjudicate upon and settle all questions involved in the suit, though plaintiff is dominus litis. With these observations, I answer point no.1 in affirmative and as to point no.2, I proceed to pass following order:

ORDER

1. Application is rejected;
2. No order as to costs.”

4. It appears that the learned trial Court while rejecting the application Exhibit 56 has ignored the earlier order dated 4th August, 2017 allowing the application moved by the some of the subsequent purchaser of the suit land under Order 1 Rule 10 of CPC. While allowing the said application, the learned trial Court has recorded the reasons in paragraph 9 which read thus:

9. Contentions as to right, title, interest of applicants could be decided on merits, which are disputed questions of fact and law. Thus, in instant matter, controversy between plaintiff, defendants and present applicants right and interest of suit property, if any, presence of applicants is just, necessary and expedient, as defendants to the suit,

which would enable this Court to effectually and completely adjudicate upon and settle all questions involved in the suit, though plaintiff is dominus litis. Further, in absence of applicants, no effective decree could be passed by this Court and to avoid multiplicity of proceeding. With these observations, I answer point no.1 in affirmative and as to point no.2, I proceed to pass the following order.

ORDER

1. Application is allowed.
2. Plaintiff is directed to add applicants as defendants in the suit within 7 days from the date of order vide Order 1 Rule 10(2) of the Code of Civil Procedure, 1908.
3. Plaintiff is directed to carry out necessary amendment in plaint and to serve a copy of plaint to newly added defendants within seven days from the date of order.
4. No order as to costs.”
5. Thus, it is evident that the trial Court has observed that, to avoid multiplicity of proceeding and further in absence of subsequent purchaser no effective decree could be passed. However, for the similarly situated subsequent purchaser some different view has been taken by the learned trial Court while rejecting the application Exhibit 56.
6. Shri Bhide, learned counsel for the respondent strongly opposed the present petition by saying that lis pendens will apply to this case and therefore their presence in the suit is not necessary.

7. No doubt, lis pendens will apply to the present matter, however, to avoid multiplicity of litigation and though they may not be necessary party but may be proper party for passing of effective decree.

8. The Hon'ble Supreme Court in the case of *Sumitabai and others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj) through Mankanwar (Smt.) W/o Parasmal Chordia (Dead) and others*¹, has observed thus :

“14. In view of the aforesaid decisions we are of the opinion that Kasturis case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

9. Thus, in the light of the above referred observations of the Hon'ble Supreme Court of India and considering that the plaintiff wants to add subsequent purchaser as party to the suit which is filed for specific performance, to avoid multiplicity of proceeding and as their presence is required for effective decree, I am of the opinion that the present petition needs to be allowed by quashing and setting aside the impugned order. Accordingly, I pass the following order.

1 2007(10) SCC 82

- i. Writ petition is **allowed**.
- ii. The order dated 15th March, 2018 passed by the 4th Joint Civil Judge, Junior Division, Washim in Regular Civil Suit No. 230 of 2013 is hereby quashed and set aside.
- iii. Application Exhibit 56 is allowed.

[ANIL S. KILOR, J.]