



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8190 OF 2023

VIJAYA MARUTI UGALMUGLE AND OTHERS
VERSUS
SANJIVAN HARIBHAU MUNDE AND OTHERS

Mr. S. Y. Mahajan, Advocate for the petitioners
Mr. D. A. Mane, Advocate for respondent Nos. 1 to 4, 6 and 7.

CORAM : R. M. JOSHI, J.

DATE : 30th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioners who claim themselves to be not the owner of any of the suit properties involved in Special Civil Suit No. 11/2020 have filed an application for adding the alleged purchaser of the properties forming subject matter of this suit and for reason of other properties being not included in the suit, is aggrieved by rejection of the said application, hence, this petition.
3. The petitioners are the defendant Nos. 7 to 10 in Special Civil Suit No. 11/2020. The suit is filed by plaintiff for partition of the suit properties and declaration in respect of some of the sale deeds executed by the defendants in favour of the purchasers. The Petitioners are

erstwhile purchasers who admittedly have sold their property to third party. They filed application vide Exhibits 35, 36, 49 and 51 for bringing the facts on record that there are other properties of plaintiff and defendants other than the properties sold to those purchasers and that in respect of those properties sale deeds are executed by the defendants. With these averments addition of the purchasers of the properties was sought.

4. Application is rejected by passing impugned order with observation that the plaintiff is dominus litis and defendant Nos. 7 to 10 or Court cannot compelled to plaintiff to institute the suit in respect of the properties described in these applications which are sold out by the plaintiff and defendant Nos. 1 to 6 to purchasers of said properties.

5. Learned counsel for the petitioners strenuously argued that the purchasers are necessary parties to the said suit and hence the Trial Court ought to have allowed this application. To support his submission he placed reliance on the judgment of Hon'ble Supreme Court in case *Moresar Yadaorao Mahajan V. Vyankatesh Sitaram Bhedi (D) Thr. Lrs., AIR 2022 SC 4710, Anil Kumar Singh Versus Shivnath Mishra alias Gadasa Guru, (1995) 3 SCC 147 and Amit Kumar Shaw and another V. Farida Khatoon and another, AIR 2005 SC 2209.*

6. Learned counsel for the respondent supported the impugned order.

7. Admittedly, petitioners are not members of joint family of plaintiff and other defendants. Further, they have no right title or interest any of the property covered by the suit, as per their own say. However, they are seeking addition of the purchasers of the properties as defendant to the suit. There cannot be any dispute made with regard to the position of law that it is for the plaintiff to choose the defendants against whom he has to seek any relief. As far as the present case is concerned, admittedly the suit is for partition and if plaintiff fails to include all the properties of the joint family in the array of the suit, the suit may fail. Suit for partition of the properties held by the joint family of plaintiff and defendants other than purchasers is one issue whereas plaintiff challenging any sale deed executed by defendants in favour of the third party is another distinct issue. Neither the Court nor defendants can compel the plaintiff to challenge any sale deed which plaintiff does not wish to challenge. In respect of the consequence of non inclusion of all properties of joint family, it is not open for the defendants/petitioners to seek addition of the purchasers as party to this suit.

8. Perusal of the judgment of Hon'ble Supreme Court in case of ***Moresar Yadaorao Mahajan*** (cited supra) shows that it was suit for

specific performance wherein objection was raised about non joinder of necessary party as the suit property was jointly own by the defendant, his wife and his son. In such circumstances, for the purpose of decision of the suit for specific performance the joint owners were necessary party. This judgment therefore would not come to the aid of petitioners owing to the vast difference in the facts involved in both cases.

9. The petitioners having no right title or interest as per their own say, may claim that they are not necessary party to the suit, however, they cannot seek addition of the party contrary to the wish of the plaintiff. It is pertinent to note that even if the purchasers are added as a party, in absence of plaintiff seeking any relief against them in respect of their sale deeds, they do not become proper or necessary party.

10. Hence, there is no merit in the petition, petition stands dismissed.

(R. M. JOSHI, J.)

ssp