



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10449 OF 2015

MANIKRAO SADASHIVRAO LONDHE
VERSUS
VIJAYABAI RAJKUMAR JAIN AND ANOTHER

Mr. D. M. Shinde, Advocate for the petitioner
Mr. S. S. Londhe, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 8th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioner is plaintiff in Special Civil Suit No. 28/2010 and being aggrieved by the order dated 13th August, 2014 passed below Exhibit 40 directing respondent No.2 Manish to be joined as co-defendant in the suit, hence this petition.
3. The facts as they appear from the record can be narrated in nutshell as under:
 - (i) Petitioner is plaintiff and has filed suit for specific performance of contract pursuant to the agreement to sale of the suit property dated 20th November, 2009 executed by the defendant Vijaya Rajkumar Jain.

Manish is son of Vijaya. He filed application to join himself as a party defendant to the suit with the contention that in the Special Civil Suit No. 25/2010 filed by him against Vijayabai, present plaintiff has joined himself as a party. It is further contended that his right is involved in the suit property and hence he is necessary party in the suit. Learned Trial Court allowed the said application by observing that in absence of Manish as defendant there is no possibility of full and complete adjudication of the suit.

4. Learned counsel for the petitioner submits that Manish is not party to the agreement to sale in respect of which specific performance is sought. It is his contention that unless any person's presence is just and necessary for effective decision of the case, he cannot become a party to the same. To support his submission he placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Kasturi Vs. Iyyamperumal and others, (2005) 6 SCC 733***. It is his further submission that in view of the fact that Manish had already filed suit for partition against his mother and others, question of deciding the inter se dispute between the defendant in the suit does not arise.

5. Learned counsel for the respondent Manish has opposed the said submissions contending that the order impugned is already

executed by causing amendment to the plaint and that since petition is filed belatedly, impugned order does not call for intervention. On merit it is submitted that being son of Vijaya, there is right and interest of this respondent in the suit properties and therefore he is necessary party to the said suit.

6. Admittedly, special Civil Suit No. 28 of 2010 is for specific performance of contract based on basis on agreement executed by defendant Vijaya dated 30th November, 2009. The scope of the suit is limited to the extent as to whether the plaintiff is entitled for specific performance of the said contract. Manish had filed suit for partition against his mother and after claiming right on the proposition of deceased father. Pertinently when the impugned order was passed the said suit was pending. It is thus clear that the issue as to whether Manish is entitled for in the suit property of his father was a subject matter of Special Civil Suit No. 25 of 2010. A person who is not party to the agreement cannot be joined as defendant for not being proper party in suit for specific performance.

7. It is not permissible for the Court to enlarge the scope of the suit for specific performance of contract. More particularly when suit for partition was pending at the relevant time. Having regard to the afore

stated fact this Court finds no reason or justification to confirm the order impugned. Merely because amendment is carried out to the plaint, petition cannot be dismissed, once it is held that order impugned is not tenable.

8. In view of this, petition stands allowed. Application (Exhibit 40) stands dismissed. Amendment carried out to the plaint be struck out.

(R. M. JOSHI, J.)

ssp