

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

Writ Petition No.17660 of 2024

Nitin BanduBavane ... Petitioner

V/s.

Dinkar Dattatray Pawar and others ... Respondents.

Mr. Prasad P. Kulkarni	Advocate for the Petitioner
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CORAM : S.M. MODAK, J

DATE : 14 December 2024.

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P.C. :

Heard learned Advocate for the petitioner.

2. The plaintiffs have filed a Suit for partition by metes and bounds and for declaration that the sale deed dated 28 August 2013 in respect of Gut No.16/1 and 16/2 in favour of defendant Nos.3,5 to 7 as not binding on 1/4th share of plaintiff No.1. Defendant No.1-Nilavati and her husband Dattatray have sold the concerned land vide the sale deed dated 28 August 2013 to defendant No.7 Manishkumar Gide. The plaintiffs have pleaded that the suit land is a joint family property and Nilavati and Dattatray have no right to sell entire land. During the pendency of suit, the said defendant No.7 Manishkumar have executed the sale deed in favour of present petitioner on 28 January 2022.

3. On this background, the petitioner moved the Court of Civil Judge, Junior Division, Mohol for impleadment. It was rejected by the trial Court.

4. My attention is invited to the reasoning in Para No.11 of that order. The learned trial Judge has differentiated in between a suit for specific performance on one hand and suit for partition on the other hand. He opined, *the principles of impleadment which are applicable in a suit for specific performance are not applicable when there is a suit for partition*. The learned trial Judge relied upon the observations in case of *Gurmit Singh Bhatia v/s. Kiran K. Robinson*. He quoted the observations of Hon'ble Supreme Court "*plaintiff is the dominus litis and he cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of Rule of law*". On facts the learned trial Judge observed there is no compulsion to add the applicant as a party defendant.

5. The contention is raised, the vendor-defendant No.7 is not contesting the suit and there is an order to proceed without written-statement. He submitted that if the decree is passed on the basis of prayers made in the suit, it will affect his right, title and interest and there will be complication if such decree without impleading him is sought to be executed.

6. It is true in the above referred case Hon'ble Supreme Court gave more weightage to the freedom of plaintiff to decide who can be

his defendants. However, on one aspect this Court feels, trial Court to consider the principles laid down in Section 44 of the Transfer of Property Act. Trial Court may consider it and then take decision. Trial Court is free to decide either way.

7. Reliance is placed on the provisions of Section 44 of the Transfer of Property Act. When the co-owner transfers his shares, what are the rights of the transferee including right to share and right to its possession and right to claim partition are prescribed. That is applicable only when there are co-owners. In this case the plaintiffs contend that the suit property including the land purchased by the petitioner are not the self acquired property of defendant No.1- Nilavati and her husband whereas their ancestral properties and as such they are having right, title and interest. This claim is not acceptable to defendant No.1.

8. I am inclined to set aside the order because this Court feels the trial Court ought to have properly applied the ratio in case of *Gurmit Singh* and its application to the averments in the impleadment application. The petitioner can rely upon the principles laid down in Section 44 of the Transfer of Property Act, though not entire provisions. This Court feels that reconsideration by the trial Court is required. This Court has not expressed any opinion about merits of the matter so that it will cause prejudice to the parties before the Suit. Hence, I have not issued notice. Hence, the following order is passed:

ORDER

- (i) The order dated 23 April 2024 passed by the Civil Judge Junior Division Mohol in Regular Civil Suit No. 231 of 2013 is set aside.
- (ii) The trial Court is directed to hear the parties again and decide it afresh.
- (iii) The Writ Petition stands disposed of.

(S.M. MODAK, J.)