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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 15023 OF 2023
IN
REVIEW PETITION NO. 10 OF 2023
IN
WRIT PETITION NO. 7023 OF 2022

Subhash Yashwant Khalde .. Applicant
Versus
Milind Bhagwat Pokharkar .. Respondent

WITH
INTERIM APPLICATION NO. 18219 OF 2023
IN
REVIEW PETITION NO. 10 OF 2023
IN
WRIT PETITION NO. 7023 OF 2022

Murlidhar Yashwant Khalde .. Applicant
Versus
Prem Challaram Tilokchandani .. Respondent

WITH
REVIEW PETITION NO. 10 OF 2023
IN
WRIT PETITION NO. 7023 OF 2022

Govind Yashwant Khalde and Ors. .. Review Petitioners
Versus
Prem Challaram Tilokchandani and Ors. .. Respondents

WITH
WRIT PETITION NO. 8590 OF 2022
AND
WRIT PETITION NO. 8591 OF 2022

Sheetal Kishinchand Tejwani .. Petitioner
Versus
Vinay Vivek Arhana and Ors. .. Respondents

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- Mr. Subhash B. Desai, Advocate for Applicant in IA No.15023 of 2023; Petitioner in Review Petition No.10 of 2023 and Respondent No.6 in WP Nos.8590 of 2022 and 8591 of 2022.
 - Mr. Drupad S. Patil a/w. B.G. Ligade, Advocate for Respondent No.1.
 - Mr. Sagar Kursija i/by Ms. Deepali Kedar, Advocate for Respondent No.2 in WP No.7023 of 2022 and for Petitioner in WP Nos.8590 of 2022 and 8591 of 2022.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2024.

P.C.:

1. Heard Mr. Desai, learned Advocate for Applicant in Interim Application No.15023 of 2023; Petitioner in Review Petition No.10 of 2023 and Respondent No.6 in Writ Petition Nos.8590 of 2022 and 8591 of 2022; Mr. Patil, learned Advocate for Respondent No.1 and Mr. Kursija, learned Advocate for Respondent No.2 in Writ Petition No.7023 of 2022 and for Petitioner in Writ Petition Nos.8590 of 2022 and 8591 of 2022.

INTERIM APPLICATION NO. 18219 OF 2023

2. At the outset, Mr. Desai would submit that in the interregnum Review Petitioner No.1 has expired, hence Interim Application No.18219 of 2023 has been filed for bringing his legal heirs on record.

3. Perused the Interim Application. Names and details of the legal heirs are stated in paragraph No.3 of the Interim Application.

4. For the reasons mentioned in the Interim Application, Interim Application stands allowed in terms of prayer clause (a). Amendment to be carried out forthwith. Re-verification stands dispensed with.

5. With the above directions, Interim Application is allowed and disposed.

REVIEW PETITION NO. 10 OF 2023

6. After allowing the Interim Application, Review Petition is taken up for hearing immediately.

7. Though the order impugned in the Review Petition dated 04.10.2022 is passed by this Court (Coram: Sandeep K. Shinde, J.) considering the roster of this Court, Review Petition is heard by this Court.

8. It is seen that by virtue of order dated 04.10.2022, Writ Petition No.7023 of 2022 was dismissed with reasons. Order under challenge in Writ Petition No.7302 of 2022 was order passed by the learned Trial Court dated 13.07.2012.

9. Writ Petition No.7023 of 2022 was filed to challenge order dated 13.07.2012 passed on Application filed below Exhibit “96” allowing impleadment of Defendant Nos.17 and 18 to the Suit proceedings. Order dated 13.07.2012 is at page No.66 of the original

Writ Petition. I have perused the same. By virtue of the said order, impleadment was allowed in view of the subsequent registered sale deed executed between the parties.

10. It is interesting to note that pursuant to passing of the order dated 13.07.2012, trial in the entire Suit proceedings was completed and culminated and only thereafter Review Petitioners sought withdrawal of the order dated 13.07.2012. When withdrawal of order dated 13.07.2012 was sought for in Writ Petition No.7023 of 2022, this Court passed order dated 04.10.2022 after hearing parties and observed that filing of Writ Petition No.7023 of 2022 after a period of 10 years was essentially seeking a review of the order dated 13.07.2012 which was allowed by the Trial Court. I endorse that opinion.

11. Submissions are advanced by Mr. Desai today namely the issue of fraud as also the concerned registered sale deed with Defendant Nos.17 and 18 being a forged and bogus document were infact considered by this Court while passing order dated 04.10.2022. On repeatedly asking Mr. Desai to show documents on the face of record as also if there is any perversity in the order passed but he is unable to show anything and would repeatedly argue that his case is based on fraud. The order dated 04.10.2022 admittedly has not been challenged.

12. It is seen that after impleadment of parties and completion of entire witness action, Plaintiffs before the Trial Court filed Application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 for striking out the Defendant Nos.17 and 18. Such a conduct on the part of Plaintiffs should not be allowed by any Court so as to allow the Plaintiffs to prosecute the Suit proceedings for a period of 10 years, complete witness action and then on the strength of the witness action permit them to make Application for striking out the parties impleaded 10 years ago.

13. In the present case, it is seen that impleadment of Defendant Nos.17 and 18 was allowed by the Trial Court on the basis of a registered sale deed and documents in respect of the Suit property.

14. Mr. Desai is unable to point out and make any submissions to show as to how the order dated 04.10.2022 can stand to the test of review. There is no error apparent on the face of record. Rather nothing is argued by Mr. Desai. Valuable judicial time is wasted. Attempts made by the Review Petitioners therefore fail and dismissal is certainly not unconditional. Review Petition is dismissed.

15. In view of the above observations and findings, Review Petitioners are directed to pay costs of Rs.10,000/- to the Kirtikar Law Library, High Court, Mumbai which shall be paid within a period of two weeks from today and receipt of payment shall be placed on

record on the next adjourned date.

16. Place the Review Petition No.10 of 2023 on Board on **21st February, 2024** for compliance.

17. The learned Trial Court is requested by this Court to dispose of pending Suit as expeditiously as possible and preferably within a period of four (4) months from today.

**WRIT PETITION NO. 8590 OF 2022
AND
WRIT PETITION NO. 8591 OF 2022**

18. In view of the above order passed in Review Petition No.10 of 2024, Mr. Kursija seeks leave to withdraw Writ Petition Nos.8590 of 2022 and 8591 of 2022. Leave granted.

19. Both the Writ Petitions are disposed of as withdrawn.

20. In view of withdrawal of the above Writ Petitions, pending Interim Applications, if any, are also accordingly disposed.

[MILIND N. JADHAV, J.]

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