

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10988 OF 2015

Uttam Baliram Kad and Ors.

Petitioners

.. (Orig. Plaintiffs)

Versus

Kailas Dhondiba Kadu and Ors.

Respondents

.. (Orig. Defendants)

-
- Mr. Dilip Bodake, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2024

P.C.:

- 1.** Heard Mr. Bodake, learned Advocate for Petitioners.
- 2.** At the outset, it is noted that none appears for Defendants despite the matter having been heard in the morning session and now in the afternoon session. Petition is listed for final hearing.
- 3.** The present Writ Petition filed in the year 2015 and takes exception to the order dated 09.12.2014 passed below Exhibit-31 and order dated 02.05.2015 passed in application below Exhibit-31 seeking amendment to the suit plaint for bringing on record subsequent events and for impleading the subsequent purchaser of the suit property.
- 4.** Mr. Bodake has drawn my attention to the Application filed below Order VI Rule 17 of the Civil Procedure Code, 1908 which I find at Exhibit-K, page No.231 of the Writ Petition. He would submit that

perusal of the application would reveal that subsequent to the filing of the suit in the year 2012 the suit property has changed hands and is now conveyed to the subsequent purchasers namely proposed Defendant Nos.8, 9 and 10.

5. In that view of the matter, he has immediately drawn my attention and asked me to peruse the impugned order dated 09.12.2014 and more specifically clause No.3 of the operative part of the said order wherein the learned Trial Court has allowed impleadment of proposed Defendant Nos.8, 9 and 10 to the suit proceedings. He would however submit that at the same time the Trial Court has not allowed the consequential amendment sought for under paragraph No.4A of the amendment application with respect to bringing on record the documents and transactions executed by the proposed Defendants with the existing Defendants and challenge to their right and entitlement.

6. He would submit that if paragraph No.4A of the Application is read and understood it would be imperative at the same time to simultaneously allowing the consequential amendment sought for by Plaintiffs delineating the subsequent events pursuant to filing of suit proceedings for impleadment of proposed Defendant Nos.8, 9 and 10 and their substantive right in the suit property. All that he would submit is that allowing mere impleadment of the proposed Defendant

Nos.8, 9 and 10 would not suffice and all subsequent events are properly explained and narrated by Plaintiffs in the further proposed amendment sought for in the plaint thereafter as proposed by paragraph Nos.3A, 3B, 6A, 6B, 7A, 10A and the appropriate prayer clauses in paragraph No.11 of the suit plaint should also be allowed.

7. Before taking me through the amendment which has been sought, Mr. Bodake would clearly concede one fact that in so far as the impugned order dated 09.12.2014 is concerned, in so far as the issue of possession of the suit property is concerned the Plaintiffs shall strictly adhere to the submissions and averments made in the suit plaint in respect thereof.

8. He would submit that the present amendment be considered only to the extent of impleadment of the proposed Defendants who are subsequent purchasers of the suit property and all such relevant subsequent events only which are delineated and narrated in the aforementioned six paragraphs of the impleadment application.

9. He would submit that while appreciating the fact that the proposed amendment is required to be allowed and granted the learned Trial Court has not allowed the subsequent events to be brought on record.

10. I have perused the proposed amendment. There is some substance in the submissions made by Mr. Bodake. Perusal of the

impleadment application shows that once amendment sought for under paragraph No.4A of the application (to add parties) is allowed by the Trial Court, then the right, title and interest in respect of the suit property of the subsequent purchaser and their transactions namely the further deed and the Power of Attorney and exchange of consideration etc. has to be brought on record as relevant subsequent events. Mere impleadment of the proposed Defendant Nos.8, 9 and 10 would therefore not be sufficient.

11. With the able assistance of Mr. Bodake, I have perused the aforementioned six paragraphs and I find that in all six proposed paragraphs Nos.3A, 3B, 6A, 6B, 7A and 10A are proposed to be brought on record, I find that what is delineated therein are nothing but facts of subsequent events, subsequent deeds and documents and transactions and the Power of Attorney executed between the parties and nothing more. It is seen that the Court though has rightly in its earlier order passed below Exhibit-31 stated that in so far aspect of possession is concerned, it shall not allow the Petitioners to make any contrary pleadings in the proposed amendment with respect to the status of possession as on 2001 when the agreement was executed for which specific performance is sought. I find no mention of the facts or issue of possession in so far as the proposed amendment in application filed by the Petitioners / Plaintiffs dated 17.04.2014 below Exhibit-33

is concerned.

12. In that view of the matter, the order dated 02.05.2015 passed in Application below Exhibit-31 is not disturbed. However the order dated 09.12.2014 which is at Exhibit-M to the Petition and the order dated 02.05.2015 which is at Exhibit-N to the Petition, passed in Application below Exhibit-33 are modified as under:-

- (i) clause 4 of the operative part of the order dated 09.12.2014 stands deleted;
- (ii) clause 2 of the said order shall now include allowing the averments made in paragraph Nos.3A, 3B, 6A, 6B, 7A and 10A and the six proposed prayer clauses in paragraph No.11 which stand allowed and modified in the operative part of paragraph No.2 of the order dated 09.12.2014; and
- (iii) in so far as the second impugned order dated 02.05.2015 is concerned, clause 4 of the said order stands deleted. Rest of the entire order is sustained.

13. In view of the aforesaid order, time to carry out the amendment to the Plaintiffs stands extended by a further period of five

weeks from today.

14. In view of the fact that suit has been pending since 2012, learned Trial Court is requested by this Court to expedite hearing of the Suit as expeditiously as possible and determine the same preferably within a period of 18 months from today.

15. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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