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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3888 OF 2024

Vijay Vithoba Sanap

Petitioner (Orig.
.. Plaintiff No.7)

Versus

Sagarmal Khangarmal Jain and Ors.

.. Respondents

-
- Mr. Rohit D. Joshi, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2024.

P.C.:

- 1.** Heard Mr. Joshi, learned Advocate for Petitioner.
- 2.** At the outset, Mr. Joshi, in his usual fairness would inform the Court that apart from the subsequent developments he desires to incorporate in the Suit proceedings by the Plaintiffs, further developments have taken place which were not part of the Application filed by the Plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "**CPC**").
- 3.** He would submit that the Suit is filed by 7 Plaintiffs, namely Plaintiff Nos.1 to 6 who are the sisters and Plaintiff No.7 who is their brother. The present Writ Petition is filed by Plaintiff No.7 i.e. brother only. Plaintiff Nos.1 to 6 are arrayed as Respondents in the present Writ Petition. He would submit that the Suit is filed against Defendants

for removal of encroachment since it is the Plaintiffs' case that in the Suit plaintiff that Defendants have encroached upon the properties belonging to the Plaintiffs and are also constructing on the said properties. He would submit that subsequent to the filing of the Suit in the year 2019 as also after filing of the Application under Order VI Rule 17 of the CPC seeking amendment, further developments have taken place. Firstly, he would inform the Court that the Application under Order VI Rule 17 of the CPC sought incorporation of an amendment in the Suit plaintiff to the effect that after the filing of the Suit proceedings, Plaintiff Nos.1 to 6 had by a registered sale deed conveyed their entire undivided right, title and interest in the Suit property as also all other properties belonging to them in favour of Plaintiff No.7. Hence in that view of the matter, Application under Order VI Rule 17 of the CPC was filed by the Plaintiffs seeking to incorporate this subsequent event and also to incorporate a prayer to the effect that in the event if Plaintiffs succeed then in that event the encroached portion shall be handed over to the Plaintiff No.7 only and not to all 8 Plaintiffs.

4. However, Mr. Joshi would next submit that pursuant thereto the sisters namely Plaintiff Nos.1 to 6 have resiled from the registered sale deed and have filed proceedings in the Civil Court to challenge the transfer of their properties including the Suit property as also other properties in favour of Plaintiff No.7 and have filed appropriate

proceedings. He would submit that, in that view of the matter, there is a clear distinction between Plaintiff Nos.1 to 6 on the one hand and Plaintiff No.7 on the other hand in so far as the Suit property is concerned. He would submit that due to Plaintiff Nos.1 to 6 having filed the Suit against Plaintiff No.7, that decision would now govern the rights of Plaintiffs. He would therefore fairly submit that, in that view of the matter, the relief in the Application filed under Order VI Rule 17 of the CPC would no longer survive due to the further subsequent events and even that leave would be subject to the outcome of the Civil Court proceedings filed by Plaintiff Nos.1 to 6 against Plaintiff No.7.

5. After perusing the impugned order and the submissions advanced by Mr. Joshi, I have impressed upon the Petitioner i.e. Plaintiff No.7 that, if Plaintiff No.7 is inclined to incorporate all subsequent events including the fact that Plaintiff Nos.1 to 6 have approached the Civil Court with respect to cancellation of the sale deed in respect of the Suit property as also or all other steps taken thereafter then in that event Plaintiff No.7 i.e. Petitioner before me can be given liberty to approach the learned Trial Court with a fresh Application.

6. The suggestion made by this Court has been accepted by Mr. Joshi. In that view of the matter, the impugned order dated 04.08.2023 is quashed and set aside and the Application filed under Order VI Rule 17 of the CPC is allowed to be withdrawn as that

Application does not incorporate the entirety of the facts which however occurred subsequently. Plaintiffs are permitted to withdraw that Application and in view of the subsequent facts, Plaintiff No.7 is now granted liberty by this Court to file an appropriate Application under Order VI Rule 17 of the CPC including the Application for seeking transposition of the Plaintiff Nos.1 to 6, if so desired by him and if so permissible in law before the learned Trial Court and if any such Application is made by Plaintiff No.7, the same shall be decided by the learned Trial Court strictly on its own merits and in accordance with law after hearing all concerned parties in the present proceedings.

7. Without delineating and opining on any merits of the matter as also findings returned by the learned Trial Court in its order dated 04.08.2023, all contentions of the parties are expressly kept open with liberty to the Writ Petitioner – Plaintiff No.7 to take out an appropriate Application under Order VI Rule 17 of the CPC or any other Application as available to him in law and prosecute the same before the learned Trial Court in Regular Civil Suit No.54 of 2019.

8. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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