

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1375 OF 2024

Satyavan Murlidhar Dalvi

.. Petitioner

Versus

Datta Vithoba Lokhande & Ors.

.. Respondents

-
- Mr. Prafulla B. Shah a/w Ms. Gunjan Shah for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024

P. C.:

1. Mentioned out of turn.
2. Heard Mr. Shah, learned Advocate for Petitioner.
3. Present Writ Petition takes exception to the order dated 30.09.2023 passed in Application filed below Exh. 149 by Plaintiffs under O. VI, R. 17 of the CPC. It is contended by Plaintiffs that the original Suit has been filed for partition, possession and cancellation of sale deed. Suit is filed in the year 2013. During pendency of the Suit sometime in 2019, Plaintiffs came across the fact that by virtue of registered sale deed bearing No. 4736/2019 dated 18.03.2019, Defendants had sold the suit property in the interregnum. Plaintiffs thereafter obtained certified copy of the revenue record of the suit property which confirmed the above fact. Mr. Shah would fairly

submit that though the Suit was filed in 2013, there was no injunction operating against the Defendants.

4. In view of the above, Plaintiffs desired to implead the new purchaser of the suit property as party Defendant to the suit proceedings. Learned Trial Court has rejected the said Application on the ground that any order that would be passed against Defendant No. 1 would be equally binding on the purchaser of the suit property as the suit property has been purchased by the third party despite the property being in dispute in the suit proceedings. On that premise, the learned Trial Court has opined that the third party purchaser is not required to be a necessary party to the present Suit.

5. The aforesaid finding is *prima facie* erroneous as it would lead to multifarious suit proceedings. This cannot be allowed. Once the said fact is confirmed by the virtue of the registered agreement that the subject suit property has changed hands, it is incumbent upon the learned Trial Court to consider the impleadment Application affirmatively. Defendant No. 1's right in the suit property stands extinguished. Hence the reason given by the trial Court deciding the impleadment application is not sustainable.

6. In view of the above, an arguable case has been made out by Mr. Shah for issuance of notice and stay of the impugned order dated

30.09.2023 and further proceedings in the Suit. Hence, issue notice to the Respondents made returnable on 21.02.2024 Humdast permitted.

In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of Respondents.

8. Stand over to **21st February, 2024 at 2:30 p.m.** Needless to state that all further proceedings in the suit before the trial Court shall stand stayed in the meanwhile.

Amberkar

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[MILIND N. JADHAV, J.]