

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10074 OF 2024

Balkishan Govindrao Konda and Ors.

.. Petitioners

Versus

Rajshree Mahadeo Pandhare and Anr.

.. Respondents

.....

- Mr. Prasad Pradeep Kulkarni, Advocate for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 26, 2024

P.C.:

- 1.** Heard Mr. Kulkarni, learned Advocate for Petitioners.
- 2.** The facts of the present case are peculiar. Plaintiff has filed suit seeking partition, possession, declaration and injunction in respect of 50% share out of suit property against Defendant. Suit is filed on 24.01.2023. However prior to filing of suit, Defendant has sold the entire suit property to a Developer who is the Writ Petitioner before me.
- 3.** Mr. Kulkarni on behalf of Developer would contend that Defendant entered into a development Agreement dated 15.06.2022 and parted with possession of the entire suit property to the Developer. He would submit that Defendant entered into a registered Agreement for sale dated 17.02.2022 and received an amount of Rs.1 Crore by cheque payment from the Developer. He would submit that this payment was made to Defendant for the entire suit property which

would include Plaintiff's share also. He would next submit that Defendant after taking possession of suit property took steps for development of the suit property and started carrying out construction which was objected to by Plaintiff and it therefore compelled the Plaintiff to file the civil suit on 24.01.2023 in the Trial Court.

4. At this juncture, Developer approached the Civil Court by filing Application under Order – I Rule 10 of the Code of Civil Procedure, 1908 (for short '**CPC**') seeking impleadment as he is having possession of the entire suit property and had taken steps for its development. One of the question that arises in the Court's mind is does the Defendant have any right, title and interest to convey 50% property of Plaintiff's share to the Developer? The answer is an obvious no.

5. Considering that entire suit property is undivided when development Agreement as also when Agreement of sale is executed, the Developer cannot claim any equity for Plaintiff's 50% share. Today Developer claims to be in possession of the entire suit property and he also claims to have taken steps for construction on the suit property.

6. Mr. Kulkarni has drawn my attention to prayers in paragraph No.16 in the suit plaint which are appended at page Nos.30 and 31 of the Writ Petition. He would submit that if those prayers are seen, Plaintiff has prayed for partition, possession and declaration that 50%

out of suit property belongs to Plaintiff but said prayer of possession as appearing in prayer clause (c) is only directed against the Defendant. He would submit that in view of the fact that possession of the entire suit property is with the Developer, the Developer sought impleadment in the suit proceeding.

7. There is one more submission made by Mr. Kulkarni which appeals to the Court. The Developer is ready and willing to give up his entire claim on the suit property and also give up his possession to the parties / Court provided the amount of Rs.1 Crore received by Defendant is returned back to him.

8. Be that as it may in above facts, an arguable case is made out while maintaining the challenge to the order rejecting Developer's impleadment since the prayer of possession is prayed for in the suit. This is so because even if Plaintiff gets the decree for partition of his share, he will then have to execute the decree for possession against the Developer. Hence to avoid multiplicity of proceedings and delay, notice is required to be issued to Plaintiff and Defendant both.

9. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Respondents a copy of this order and copy of the Writ Petition 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. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date.

10. Respondents are directed to remain present on next adjourned date to enable this Court to appreciate their stand and determine the present Writ Petition. Parties shall take cognizance of this order and copy of Writ Petition which shall be served on them.

11. In the meanwhile, suit proceedings before the learned Trial Court shall stand stayed until the present Writ Petition is determined.

12. Stand over to **09th September, 2024 at 02:30 p.m.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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