IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.14552 of 2024

Mangala Mahavir Devda and others … Petitioners
V/s.
Santoshkumar Chindulal Lunawat and others … Respondents.

Mr. Chetan S. Damre	Advocate for the Petitioners

LATA SUNIL PANJWANI
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Date: 2024.11.28 11:20:38 +0530

CORAM : S.M. MODAK, J

DATE : 13 November 2024.

P.C. :

I have already heard learned Advocate for the Petitioners-proposed Intervenor on 23 October 2024. Today also I have heard him. **He has tried his level best to convince this Court that impleadment of his clients are very much necessary in the hearing of the Regular Civil Appeal No.33/2017. But on facts, I am not convinced.**

2. The background facts of this petition are as follows:-

a. There is a property situated at Manmad bearing City Survey No. 825/B/3/A-2-1-1/4 admeasuring 74 sq. meters. There is a structure standing thereon.

b. In fact, this property is owned by one Nemichand Sanklecha. He is survived by his wife Bhikubai and present petitioners being

daughters and 3 sons namely -- Kantilal, Pradeep and Sushil.

c. All the 3 brothers have decided to sell this property by entering into an agreement for sale dated 22/9/2008 to one Santoshkumar Lunawat. **This Santoshkumar has filed a Specific Performance Suit before the Court of Joint Civil Judge Junior Division, Malegaon being Special Civil Suit No.49/2009.**

d. The Petitioner's case is after the death of their mother Bhikubai, their brothers with dishonest intention have not added the name of the present petitioners on the record of that suit.

e. Apart from the three brothers, in fact their mother was also defendant No.4. She expired on 3 September 2013.

f. The plaintiff/prospective purchaser therein informed the court by filing pursis about the death of defendant no.4 Bhikubai in that suit. Copy of the pursis is on Page No.49 and copy of death certificate is on page no. 50.

g. Present petitioners grievance is three brothers-defendants dishonestly have not brought on record their names being the other legal representatives of deceased mother Bhikubai That is how the petitioners were kept in dark about that suit.

h. The said suit was decreed on 10 January 2017. **The three brothers were directed to execute the sale deed by accepting the balance consideration.** Those three brothers have challenged said judgment by way of the **appeal R.C.A. No. 33/2017** which is pending before the District Court at Malegaon.

i. In the mean time, the present petitioners have filed **Special**

Civil Suit No. 63/18 for partition of property (which is suit property in specific performance suit) before the Court of Civil Judge Senior Division at Malegaon, Nashik against the three brothers and the prospective purchaser and the suit is pending.

j. The Petitioners after getting knowledge of all these developments **moved an application for impleadment before the appellate Court which was rejected on 8 May 2024. This order is challenged by way pf present writ petition.**

Consideration

3. So limited issue involved in this petition is --

> *"whether the petitioners can be said to be proper or necessary parties in the said appeal and whether the appellate court was justified in rejecting their request".*

Law is well settled. The provisions of Order I Rule 10 gives us guidance. The name of following persons can be joined as parties --

a. the persons whose names ought to have been joined but not joined,

b. whose presence before the Court is necessary for adjudicating the dispute effectively and completely.

It is true if a person has right, title and interest in the property,and if the rights are violated by any person, he is having every right to approach the Court of law. **No doubt, the property involved in the disposed of specific performance suit and pending appeal and the**

property in which the Petitioners have claimed a right of a partition by way of suit is the same.

About specific performance suit

4. It is admitted fact that this Petitioners were not the parties to the agreement for sale. It is their grievance also. So the plaintiff therein was justified in not joining the present petitioners in that suit. Be that it may, now the specific performance decree is passed. Appeal is nothing but the continuation of suit. The claim of present petitioners can be tested by applying the test of *"effective and complete adjudication of dispute involved in the appeal challenging specific performance decree".*

5. The present Petitioners have got a limited role to play in present appeal. Because they were not parties to the suit agreement and there is no occasion for them to adduce evidence in that suit. Because issues involved in that appeal are just like " *whether there was a valid agreement for sale and whether there was breach and specific performance can be granted and any other issue*". The three brothers have not pleaded in the suit that present petitioners were the necessary parties to the suit. Atleast it is not pointed out to me from the issues framed therein and the findings recorded. **For these reasons, the appellate court is not expected to decide the claim of petitioners about right, title and interest in the suit property.**

About partition suit

6. Instead, they have already filed a Partition Suit which is pending before the Civil Judge Senior Division Court, Malegaon. In the said Special Civil Suit No.63 of 2018 the three brothers and purchaser are party defendants. It is true that in Para No.4 of the plaint, Plaintiffs-Petitioners herein have made grievance about entering into an agreement for sale by depriving their right. Even they have made grievance about not bringing their names on record after death of their mother-Bhikubai in their specific performance suit. Even they have pleaded that the decree passed therein is not binding on them.

7. Even **the prayer clause (i) of partition suit** mentions --

> **"सदरची वाटणी स्पे.मु. ४९/२००९ मधिल हुकुमनाम्याची उपेक्षा करून केली जावी."**

Meaning thereby the Partition Decree may be passed without considering the specific performance decree. It is not made clear what is the stand of their three brothers and the decree holder in the partition suit. There is every likelihood that all of them must have denied these allegations. If it is so the Court seized of partition suit is supposed to give findings on the allegations of the present petitioners. In other words, certainly they will get an opportunity to make all the grievances and prove them. **Considering facts and circumstances, the scope of partition suit is wide as compared to an**

appeal in which specific performance decree is challenged. The adjudication is more effective and complete as compared to the adjudication in a pending appeal.

8. Considering the above facts, this Court feels that the Petitioners have already taken steps making grievance about the specific performance decree. It is not that they are deprived of agitating their grievance. The ratio laid down in case of **Sumitabai and others v/s Paras Finance Co. Regd. Partnership Firm reported in 2007 AIR ACW 6125** is not applicable to the present facts. The reason is in that matter issue has arisen during pendency of suit and legal representatives were brought on record.

Further apprehension

9. The contention is if the appeal is dismissed and if the specific performance decree is confirmed, the Petitioners will loose their right and will not get the benefits even if the Partition decree will be passed in their favour. **This contention has no merit, because the Court seized of partition suit is going to dwelve on this grievance.**

10. One peculiar situation may occur before the Court seized of partition suit. It may happen that the appellate court may confirm the decree and the Court seized of partition suit is not in a position to give any releif of partition of the suit property. In that eventuality, the present petitioners may be remediless except challenging that decision. There may also be other eventuality in which releif may not

be granted to the present petitioners. In order to deal with such an eventuality, it is in the interest of petitioners to seek amendment in the present plaint to claim alternative releif including compensation. Ultimately whether such relef can be granted or not is such matter of evidence. But there has to be foundation in the pleadings.

11. Considering the circumstances, this Court feels that Petitioners can be granted liberty to make alternative prayers in the Partition Suit. If the petitioners desires to file such an application, the Court seized of the suit to decide it after hearing the defendants therein.

12. With these observations, I am not inclined to entertain the petition. The Petition is dismissed.

(S.M. MODAK, J.)