



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5942/2022

Naresh s/o Kachruji Barve

Vs.

Smt. Rita Wd/o Arvindsingh Yadav and others

Office Notes, Office Memoranda
of Coram, Appearances, Court's
orders or directions and
Registrar's orders

Court's or Judge's orders

Mr. S.S. Deshpande, Advocate for petitioner
Mr. S.A. Deole, Advocate for Respondent Nos.4 and 5

CORAM: N.R. BORKAR, J.

DATED : 19th JUNE, 2024

This petition takes exception to the order dated 29.07.2022, passed by the learned 13th Jt. Civil Judge, Senior Division, Nagpur below Exh.19 in Special Civil Suit No.571/2022.

2. The petitioners herein have filed a suit for specific performance of agreement of sale dated 04.08.2022 against the respondent Nos.1 to 3.

3. The respondent Nos.4 and 5 by application at Exh.19 under Order 1 Rule 10 of the Code of Civil Procedure sought their impleadment in the suit. The trial Court has allowed the said application by the order impugned.

4. I have heard the learned counsel for the petitioner and learned counsel for the respondent Nos.4 and 5.

5. The learned counsel for the petitioner submits that the present respondent Nos.4 and 5 are not parties to the agreement of sale dated 04.08.2022. It is submitted that the respondent Nos.4 and 5 are therefore neither necessary nor proper parties to the suit. It is submitted that the learned trial Court thus erred in allowing the application. In support of the submissions, the learned counsel for the petitioner has relied upon the judgment of this Court reported in **2008(2) ALL MR 138** in the case of **Kamlakar s/o Mahadeo Garad Vs. The Joint Director (Sugar) & Anr.** and the judgment reported in **2022 LiveLaw (SC) 773**, in the case of **Sudhamayee Pattnaik and others Vs. Bibhu Prasad Sahoo and Others.**

6. On the other hand, the learned counsel for the respondent Nos.4 and 5 submits that the suit properties are jointly owned by respondent Nos.1 to 5. It is submitted that in absence of partition by metes and bounds they have preferential right to purchase the suit properties. It is submitted that the learned trial Court was therefore justified in allowing the application.

7. This Court in the judgment reported in **2008(2) ALL MR 134** in the case of **Rajubhai Kamdar @ Rajendra Kamdar Vs. Smt. Sunita W/o Ashok Gandhi & Ors.** has held thus :

“Perusal of the above provisions clearly shows that the person who can sue for specific performance of contract has been specifically mentioned therein. Similarly, the person who can be sued or against whom relief can be sought are also clearly mentioned in Section 19. Now with this background, it would be necessary to quote paragraph 9 of the judgment of the Supreme Court in the case **Anil Kumar Singh Vs. Shivnath Mishra** (cited supra).

“Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party”.

8. Admittedly, the respondent Nos.4 and 5 are not party to agreement of sale dated 04.08.2022. It is well settled that third party or stranger to a contract can not be added to a suit so as to convert a suit of one character into a suit of different character. In the result, following order is passed.

I. The petition is allowed.

II. The order impugned is set aside.

III.The application filed by the respondent
Nos.4 and 5 at Exh. 19 is hereby rejected.

IV.No costs.

JUDGE

MP Deshpande