

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14002 OF 2024

Bhagawan Govind Kamble	vs.	...Petitioner
Jaysingh Dattatraya Desai		...Respondent

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Mr. Sandesh Patil a/w. Ms. Divya Pawar, for the Petitioner.
Mr. Omkar Nagwekar, for Respondent No. 1.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 18, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The petitioner, a third party applicant, in execution proceeding, Special Darkhast No. 13 of 2019, takes exception to orders dated 25th June, 2024 whereby the applications taken out by the petitioner to implead him as party to the execution application (Exh. 19) and stay the execution proceeding (Exh. 24), came to be rejected.
3. The respondent No. 2 is the brother of the petitioner. An Agreement for the Sale of the suit property (which the petitioner claimed to be the joint family property), executed by respondent No. 2 in favour of respondent No. 1, on 6th July, 2010, has led to multiple proceedings.
- 3.1. Respondent No. 1 instituted a suit for specific performance of

the said agreement, being Special Civil Suit No. 18 of 2013. In the said suit, the petitioner had filed an application for impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908 (the Code). The said application was rejected by an order dated 20th February, 2019. Eventually, the said suit was decreed by a judgment and order dated 20th March, 2019.

3.2. To execute the said decree, the respondent No. 1 has filed execution proceeding being Special Darkhast No. 13 of 2019 in which the impugned orders have been passed.

3.3. In the meanwhile, the petitioner filed SCS No. 25 of 2015 for partition of the joint family properties. The said suit was decreed by a judgment and decree dated 3rd April, 2019 as respondent No. 2, the defendant therein, did not contest the said suit. Execution Petition No. 8 of 2023 was filed by the petitioner. The said execution petition was settled in terms of an award passed by the Lok Adalat on 27th July, 2024 in Final Decree Application No. 8 of 2019.

3.4 The petitioner also filed a suit bearing RCS No. 191 of 2019 for declaration that the judgment and decree in SCS No. 18 of 2013, filed by respondent No. 1, is not binding on the petitioner.

4. The respondent No. 1 has, in turn, filed RCS No. 218 of 2019 for a declaration that the judgment and decree in SCS No. 25 of 2015 is not binding on respondent No. 1.

5. In view of the pendency of these suits and proceedings, Mr. Patil, the learned counsel for the petitioner, would urge that there is a genuine and bonafide dispute about the legality and validity of the decree passed in SCS No. 18 of 2013 qua the share of the petitioner in the suit property. Both the petitioner and respondent No. 1 have instituted suits questioning the binding character of the decrees passed in the rival suits. Those suits are still subjudice. In these circumstances, the application preferred by the petitioner under Order 21 Rule 97 of the Code, could not have been rejected at the threshold.

6. The executing Court, according to Mr. Patil, proceeded on an incorrect premise that the earlier application preferred by the petitioner for impleadment was rejected and the orders passed in the other suits had no bearing on the execution of the decree passed in SCS No. 18 of 2013.

7. Evidently, the SCS No. 18 of 2013 in which the decree was passed, was for specific performance of the contract executed by respondent No. 2 in favour of respondent No. 1. In the said suit, the petitioner had filed an application for impleadment which came to be rejected. It seems that the said order attained finality as it was not challenged. In the backdrop of the nature of the said suit, the petitioner did not appear to be either a necessary or a proper party.

8. A three Judge Bench of the Supreme Court in the case of **Kasturi vs. Iyyamperumal and Others**¹ has enunciated the law in clear and explicit terms that the third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. To decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit.

9. I am afraid in the light of the aforesaid position in law, once the application for impleadment as a party defendant was rejected by the trial Court during the pendency of the suit, post decree, such a party can not be permitted to again seek impleadment in the execution proceeding by filing an application under Order 21 Rule 97 of the Code. Thus, on first principles, the learned Civil Judge does not seem to have committed any error in law in declining to permit the petitioner to join as a third party in the execution proceeding.

10. On the merits of the matter, prima facie, it appears that after respondent No. 1 instituted SCS No. 18 of 2013, a suit for partition came to be filed by the petitioner against respondent no. 2. A decree came to be passed in the said suit as respondent No. 2 chose not to contest the suit. In the backdrop of these hard facts, the execution

1 (2005) 6 Supreme Court Cases 733.

of the decree in SCS No. 18 of 2013, for which there is no impediment, cannot be stayed by resorting to a litigative stratagem. Lest, the decree would loose meaning and content. Hence, the petition does not deserve to be entertained.

11. The petition stands dismissed.

(N. J. JAMADAR, J.)