



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

WRIT PETITION NO.1/2025

Rajesh Chenkaran Kochar .Vs. Dilip Namdevrao Tupkar and Ors.

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

Court's or Judge's orders

Mr. H. A. Rewatkar, Advocate for petitioner.

CORAM : **ANIL L. PANSARE, J.**

DATE : **JANUARY 2, 2025**

Heard Mr. H. A. Rewatkar, counsel for the petitioner.

2. The petitioner, who made an unsuccessful attempt to intervene in the suit filed by respondent No.1 against the other respondents, is before the Court, challenging orders dated 20.12.2024, passed by the Trial Court in Special Civil Suit Nos. 843/2018 and 815/2018.

3. Having heard counsel for the petitioner, it appears that respondent No.1 has filed two suits against the other respondents. Both the suits are filed for specific performance of the contract, partition, separate possession, declaration and permanent injunction. It appears that on 04.05.2013, the respondents entered into two different agreements to sell. Both the suits are filed based on these agreements.

4. The petitioner approached the Trial Court under Order I Rule 10 of the Civil Procedure Code, 1908 stating therein that respondent Nos.2 to 9, who are original defendants, have pending suits, entered into agreement to sell the suit property with him and, therefore, his presence in the aforesaid

two suits was necessary. He has further averred that he has filed Special Civil Suit No.713/2021 against the aforesaid respondents seeking specific performance which is pending before the Court.

5. It appears from the impugned order that respondent Nos.2 to 9 have entered into agreement to sell with the petitioner, not only pending suit but despite there being order of injunction against them to not create third party interest in the suit property.

6. The question is whether, in such circumstances, the petitioner is necessary party to the suit. The Trial Court has rightly answered the same in the negative. It is well settled that the necessary party is the one without whom no effective orders can be passed and the proper party is the one in whose absence an effective order can be passed but whose presence is required for complete and final decision of the suit.

7. In the light of the above, if the application for intervention is examined, the subsequent transaction entered into by respondent Nos. 2 to 9 – original defendants with the petitioner is of no relevance to decide the suits filed by respondent No.1 against the original defendants. More so, when the petitioner has filed separate suit for specific performance of contract entered into by and between him and the original defendants. His presence, therefore, cannot be said to be necessary or proper in the suits filed by respondent No.1 against the original defendants.

8. The counsel for the petitioner submits that there will be multiplicity of proceedings, which could be avoided by permitting the petitioner to join as defendant in the suits filed by respondent No.1.

9. I do not find any substance in the aforesaid submission inasmuch as the cause of action to file various suits are altogether different though the suit property appears to be the same. The presence of the petitioner is not relevant to decide whether the respondent No.1 was always ready and willing to perform his part of contract and whether the contract entered into by respondent No.1 with original defendants is specifically enforceable. The petitioner could have, at the most, approached the appropriate forum for clubbing the suits for decision by one Court. His presence is, however, not necessary in the suit filed by the respondent No.1. There is, thus, no merit in the petition. The petition is dismissed. No order as to costs.

10. Copy of the order be served upon the Trial Court.

(Anil L. Pansare, J.)