

(2009) 06 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 12747 of 2007

Dahiben Patel

APPELLANT

Vs

Minaben and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 06 GUJ CK 0037

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : R.S. Sanjanwala, for the Appellant; Utpal M. Panchal, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The petitioner - ori. third party applicant has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 2.4.2007 passed by the learned 5th Joint Senior Civil Judge, Surat below Ex.47 in Regular Civil Suit No. 831 of 2005 whereby the learned trial Judge has rejected the application of the petitioner to be joined as party defendant in the said suit.

2. This Court has issued Rule and notice as to interim relief on 10.5.2007. On 30.1.2008 this Court has passed further order recording the submission of Mr. Panchal, learned advocate appearing for the respondent that the petition be expedited and in the meantime the plaintiff will not proceed further with the pending civil suit. The Court, therefore, fixed up the matter for final hearing on 13.2.2008 and in view of the statement made by Mr. Panchal the Court has not considered the question of interim relief.

3. Heard Mr. R.S. Sanjanwala, learned advocate for petitioner and Mr. Utpal Panchal, learned advocate appearing for the respondent No. 1. Despite service of notice of Rule nobody appears on behalf of the respondents No. 2 to 7.

4. It is the case of the petitioner that the land bearing Revenue Survey No. 63/2 and 64/1 of Village: Katargam, Tal. Choryasi, Dist. Surat was purchased by three persons, namely, Jiviben Ranchhodhai, Katara Kalyanbhai and Balvantrai Ranchhodji. Out of total consideration of Rs. 17,999/- Balvantrai Ranchhodji was required to pay Rs. 7,000/- out of which Rs. 2,000/- was paid by the petitioner whereas Rs. 2,500/- was paid by Dhanuben - respondent No. 2. The petitioner and the respondent No. 2 are sisters and Balvantrai is the petitioner's brother-in-law and husband of respondent No. 2 -Dhanuben. It was at the relevant time agreed that the petitioner would be 2/7th owner of the above parcels of land.

5. It is also the case of the petitioner that a partition agreement was executed between Balvantrai Ranchhodji Patel, Dhanuben Balvantrai Patel and the petitioner, under which the petitioner was given 2/7th share of the land in question and the possession of the land was also handed over to the petitioner.

6. Balvantrai Ranchhodji Patel is survived by six children. Meena one of the daughters of the Balvantrai Ranchhodji filed Regular Civil Suit No. 831 of 2005 in the Court of learned Civil Judge (S.D.) Surat inter alia praying for partition of the properties enlisted in the said suit. One of the properties included in the said list of properties is the land in question. The suit thus seeks partition of the entire parcel of land between the plaintiff of the said suit and the defendants. Though the petitioner has 2/7th share in the said land and though the petitioner is in possession of the 2/7th share in the land, after partition thereof in 1990, the petitioner's land has also been included in the list of properties. Moreover, the petitioner has not been joined as a party defendant in the suit. The defendants No. 1, 3 and 4 of the said suit have supported the petitioner's claim of 2/7th share in the suit property.

7. The petitioner thereafter gave an application Ex.47 inter alia praying that the petitioner be joined as party defendant. By the impugned order dated 2.4.2007 the petitioner's application for being joined as a party defendant has been rejected. It is the order which is under challenge in the present petition.

8. Mr. R.S. Sanjanwala, learned advocate appearing for the petitioner has submitted that the learned trial Judge has clearly erred in rejecting the petitioner's application for joining as party defendant in the suit. For deciding application Ex.47 the learned trial Judge is not supposed to go into the validity or legality of the claim made by the petitioner. The claim of the petitioner is supported by the deed of partition of 1990 as well as the written statements filed by defendants No. 1, 3 and 4. In view of the claim of the petitioner of being 2/7th owner of the land in question, the petitioner is a necessary and proper party in the suit. The petitioner, in any case, is a proper party as any decision in the suit will have a bearing on the title claimed by the petitioner. By joining the petitioner, other parties to the suit are also not likely to be prejudiced. He has, therefore, submitted that it would be in the interest of justice to grant the application filed by the petitioner. Since the application was not granted the petitioner has no other alternative but to file present petition before this Court.

9. Mr. Utpal Panchal, learned advocate appearing for the respondent No. 1 - ori. plaintiff, on the other hand, has opposed this petition and submitted that the entire story was concocted and only after filing of the suit the alleged partition deed was created. He has, therefore, submitted that there is no evidence on record to show that the petitioner has paid any amount towards purchase of the property in question. He has further submitted that this being a partition amongst the family members and the petitioner is not a family member, there is no question of joining the petitioner in the pending suit. He has, therefore, submitted that the petition may be dismissed with costs.

10. Having heard the learned advocates appearing for the parties and having gone through the order passed by the learned trial Judge, the Court is of the view that the petitioner has claimed his interest in one of the properties sought to be partitioned. Whether the document on which the reliance is placed by the petitioner is a genuine or forged document can be decided at the time of trial of the suit. When the plaintiff has placed this document before the trial Court and on the basis of such document he has claimed his interest in the property and his claim is supported by three defendants of the suit, the petitioner's application for joining as party defendant cannot be rejected. After joining the petitioner as party the claim of the petitioner can be adjudicated on merits and, thereafter, it can be decided as to whether the petitioner is having any interest in the property on the basis of the said document. However, while deciding the application for joining as party no decision on merit can be given by the trial Court.

11. In the above view of the matter, the Court is of the view that the order passed by the trial Court cannot be sustained and it is accordingly quashed and set aside. The petitioner is hereby directed to be joined as party defendant in the suit and he may also file his written statement in the pending suit. It is, however, made clear that the genuineness of the document has not gone into by the Court at this stage. It is open for the respondents to raise all these contentions disputing the said document. This order will not come in the way of the respondent No. 1 by raising all these disputes at the time of trial and/or final disposal of the suit.

12. Subject to the above clarification this petition is allowed. Rule is made absolute to the aforesaid extent without any order as to costs.