
(2009) 10 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 3292 of 2008

Kum. Ratnabai and Smt. Indirabai Adhar Pardeshi	APPELLANT
Vs	
Adhar Pardeshi Died. and Others	RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 6 Rule 17
Transfer of Property Act, 1882 — Section 52

Citation : (2009) 111 BOMLR 4472

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : C.R. Deshpande, for the Appellant; A.B. Girase, to 4, J.R. Shah, for Respondent No. 6, S.I. Nandode, for Respondent Nos. 5 to 9 and Balaji Shinde, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule, returnable forthwith. Heard with the consent of the parties.

2. This Writ Petition is filed challenging the Order dated 12/4/2007 passed by the 5th Jt. Civil Judge (J.D.), Dhule.

3. The background facts of the case as disclosed in the petition are as under.

The petitioner No. 1 is a daughter of petitioner No. 2 and respondent No. 1 (now deceased). The respondent No. 2 is the grand mother of the petitioner No. 1, whereas the respondent Nos. 3 and 4 are the purchasers of the joint family property from the defendant No. 1. Respondent Nos. 5 to 10 are proposed respondents who are also subsequent purchasers.

The petitioner No. 1 had filed R.C.S. No. 288 of 2000 in the Court of the Civil Judge (J.D.), Dhule for partition and separate possession of the suit property.

After the death of the original defendant No. 1, namely Adhar S/o Ukha, the plaintiff No. 2, who is the widow of defendant No. 1, has been brought on record

as plaintiff No. 2. According to the plaintiff, the suit property is the joint family property. The defendant Nos. 1 and 2 started disposing of the said property and have sold some of the properties to the defendant Nos. 3 and 4. It is averred in the plaint that the defendant No. 1 ill treated the plaintiff No. 1 Indrabai and never maintained plaintiff No. 1 Ratnabai as well as Indrabai. The suit properties have not been partitioned and the plaintiffs have got their joint share in the joint properties. Thus, the plaintiffs prayed that, the sale deed dated 15/12/2000 and 23/9/1998 executed by the defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 be declared as cancelled and it be further declared that those are not binding on the plaintiffs. The plaintiffs further prayed for declaration of their share on partition and actual separate possession and mesne profits.

4. On 1/8/2002, the original defendant No. 1 had filed Written Statement and denied the contentions in the plaint. On 22/10/2001, Issues have been framed at Exh. 28. The plaintiffs have filed application Exh. 38 for injunction restraining the defendant from alienating the suit property. On 29/7/2002, the said application has been allowed by the Civil Judge (J.D.), Dhule and injunction came to be granted against the defendant.

It is specific case of the petitioners that in spite of order of injunction dated 29/7/2002, the defendant Nos. 1 and 2 have alienated the portion of suit properties to various persons.

5. On 19/1/2007, the petitioners had filed an application at Exh. 136 in R.C.S. 288 of 2000 and pointed out subsequent alienations, in spite of the injunction order in force against the defendants. Thus, the plaintiffs prayed for amendment in the plaint by way of addition of paragraph 8A and 13E in the plaint and for addition of the subsequent purchasers named in Schedule A as the defendants in the Suit.

The said application has been resisted by the defendants on the ground that the amendment would change the nature of the Suit and also on the ground that it is barred by limitation.

6. On 12/4/2007, the 5th Jt. Civil Judge (J.D.), Dhule rejected application Exh. 136 on the ground that, the transaction in question are hit by the provisions of Section 52 of the Transfer of Property Act (for short " the Act "). Therefore, the pendentelite purchasers are not the necessary parties.

7. This Writ Petition is filed challenging the Order dated 12/4/2007 passed by the 5th Jt. Civil Judge (J.D.), Dhule below application Exh. 136.

This Court by Order dated 4/5/2009, granted leave to add proposed third parties to the petition. Notices were issued to the newly added parties and in pursuance to the notice, the added proposed third parties are represented by their respective counsels.

8. The learned Counsel appearing for the petitioner submitted that, it is the specific case of the original plaintiff/petitioners herein in R.C.S. No. 288 of 2000,

that the defendant Nos. 3 and 4 are the purchasers of the joint family and the sale deeds executed by the defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 have been challenged. In this view of the matter, the pleadings and the nature of the relief claimed, the nature of the Suit would not change, if the pendente lite purchasers are added as respondents and the plaintiffs are allowed to amend the pleadings suitably. It is further submitted that while rejecting the application Exh. 136, the Court below has taken a view that the pendente lite purchasers are not the necessary party for the reasons that, the transaction is hit by the provisions of Section 52 of the Act. It is further submitted that, the Court below has lost sight of law laid down by the Hon'ble Apex Court in the case of Savitri Devi Vs. District Judge, Gorakhpur and Others, , that the purchasers are the necessary party to the Suit for deciding questions whether sales were committed in contempt and disregard of the prohibitory order passed by the court and also decide the question as to whether pendente lite purchasers are bonafide purchasers. Even otherwise, for avoiding the multiplicity of litigation, the pendente lite purchasers are necessary party. It is further submitted that on the point of allowing amendment before the lower court, the reliance was placed on the Judgment of this Court reported in Union of India (UOI) Vs. Rajkumar Agarwal, . The learned Judge of the Court below has observed that as the alienation is without permission of the Court and as such the same is hit by doctrine of lis pendence, declaration of sale deeds to be null and void is not necessary. According to learned Counsel, the legal position observed by the learned Judge is correct, but unless the pendente lite purchasers are parties to the Suit, the Judgment and Decree that would be passed in the Suit filed by the plaintiffs will not bind them. The learned Counsel further submitted that without the addition of the parties and the amendment in the plaint, it would not be possible to decide the dispute fully and finally. It is further submitted that while considering the application for amendment in the pleadings, the Court should not adopt hyper technical approach and the amendment can be allowed at any stage of the Suit, if it is in the interest of justice. It is further submitted that the application before the Court below was filed immediately when the petitioners got knowledge about illegal transactions of sale. According to the learned Counsel, the principles of law of limitation would not apply in case of illegal transactions. According to the learned Counsel, from the date of knowledge of the illegal transaction, the petitioners have taken immediate action to file appropriate application to make the purchasers party to the Suit as well as amendment of the Suit and, therefore, the law of limitation would have no application in the instant case. The learned Counsel further submitted that the petitioners, who are the original plaintiffs are helpless ladies and it would not be possible for them to file another Suit against the purchasers. If the purchasers are not made party to the Suit, they may file separate Suits, which would increase multiplicity of the proceedings and it would be very difficult for the petitioners to face those proceedings. Therefore, learned Counsel would submit that the proposed respondents are necessary party to the Suit and amendment to the Suit is also equally essential to resolve the real controversy involved in the

Suit between the parties. The learned Counsel further submitted that, once the proposed respondents are directed to be added as party respondents in the Suit, in that case, it will be open for the respondents to raise objections like limitation or Suit is filed against those respondents without prior permission of the Charity Commissioner, etc.. Therefore, learned Counsel would submit that in the interest of justice and to avoid further multiplicity of proceedings, the proposed respondents are necessary parties to the Suit and amendment which was suggested by the petitioners by way of filing application at Exh. 136 before the Court below, is also necessary to put end to the controversy and for proper execution of the decree, which would be passed in the Suit.

9. The learned Counsel appearing for the Respondent Nos. 2 to 4 submitted that, the petition filed by the petitioners is devoid of merits. According to the learned Counsel, a Regular Civil Suit for possession and partition is filed in the year 2000. The Issues were framed on 22/10/2001 and 23/9/2004, the transactions took place between the period 5/2/2003 to 3/4/2006 and application is filed for amendment of the plaint as well as adding the purchasers as party on 19/1/2007. It is further submitted that, the petitioners are unnecessarily trying to drag the present respondents in the litigation. It is further submitted that in the Suit filed by the petitioners for partition of the properties, the contention of the petitioners/plaintiffs is that, the suit properties are the joint family property of respondents and they are entitled for partition and the original defendants denied that the suit properties are their joint family properties, hence the necessary issue has been framed in this regard. It is further submitted that in the Suit for partition, the Court should have first drawn a preliminary decree, which would crystallize the rights of the parties, unless and until the Court draws preliminary decree with a specific direction that the plaintiff is entitled for partition and separate possession and the extent of the share, petitioners do not have right to drag the third parties like respondents, in litigation which would be abuse of process of law. It is further submitted that it is well settled law that one coparcener could sold his share in the joint family property to the extent of his share, hence it would be suffice for the petitioner to ask for declaration without joining the present respondents as party to the Suit. It is further submitted that the proposed amendment sought by the petitioner is beyond the period of limitation in view of the fact that the transaction of sale took place between the original defendant Nos. 1 and 2 with the present respondent by registered sale deed much prior to the filing of application dated 19/1/2007, hence petitioner can not be said to be diligent and they are prohibited by the proviso of Order VI Rule 17 to raise the challenge to the sale transaction by way of amendment, which is beyond the period of limitation.

It is further submitted that without prejudice and in the alternate, the respondents are bonafide purchasers with value and their vendor being karta is entitled to sold the joint family property for the sake of family necessity, even for the moment even if it is taken that the property being a joint family property, hence in such fact situation, the transaction took place between the original

defendant Nos. 1 and 2 with the present respondents are binding on the petitioner. It is further submitted that the Court below has passed just, proper and equitable order and, therefore, no interference is called for in Writ Petition. The learned Counsel in support of his contention, relied on reported Judgment of the Apex Court in case of Sarvinder Singh v. Dalip Singh and Ors. reported in 1997 (1) Mh. L.J. 539 and submitted that application under Order I Rule 10 of CPC seeking impleadment on the basis of sale deed executed by the defendants in favour of applicants pending Suit and without authority or order of the Court not obtained for alienation of property, alienation would be hit by doctrine of lis pendence and person seeking joinder, can not be said to be either necessary party to the Suit. Therefore, the learned Counsel would submit that the answering respondents are not necessary parties to the Suit. The learned Counsel further invited my attention to the reported Judgment of the Hon"ble Apex Court in case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, and submitted that, under Order XXII Rule 10 of Code of Civil Procedure, when there has been devolution of interest during the pendency of Suit, the Suit may, by leave of the Court be continued by or against the persons upon whom interest has devolved and this entitles, the person who has acquired an interest in the subject matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested to apply to the Court for leave to continue the Suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record and yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary .

10. Therefore, learned Counsel would submit that the answering respondents are aware about the consequences of not joining themselves as party to the Suit. However, they have taken a risk of purchasing the property during lis pendens, they are running with the risk and they are not necessary party to the Suit. The learned Counsel further invited my attention to the reported Judgment of the Apex Court in case of Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, and submitted that Transferee pendente lite are not necessary parties to the pending Suit.

11. The learned Counsel further invited my attention to the reported Judgment of the Apex Court in case of Sanjay Verma v. Manik Roy and Ors. Reported in 2007 AIR SCW 1490 and submitted that Transferee pending Suit for specific performance of agreement to sell - Transfer made by transferees from defendant without leave of Court, can not claim impleadment in view of doctrine of lis pendens.

12. Therefore, the learned Counsel would submit that the view taken by the Apex Court in all the aforesaid cases is consistent and, therefore, the transaction during the pendency of Suit is hit by the provisions of Section 52 of the Act. The

proposed respondents are not necessary parties and amendment which is suggested by the petitioners will change the nature of the Suit and said amendment is at very belated stage and as rightly concluded by the trial court, the answering respondents are not necessary parties to the Suit and amendment proposed by the original plaintiff would change the nature of the Suit and same amendment is at belated stage.

13. The learned Counsel appearing for Respondent Nos. 1,5 to 7 and 9 submitted that, the transaction between the parties have been taken place long back prior to filing of application praying therein for adding the proposed respondents and for amendment. In fact, according to the learned Counsel, some of the transactions between the parties have taken place in the year 2002 - 2003 and the application is filed after 3 years from the date of said transactions. The learned Counsel invited my attention to Exh. D of the compilation and submitted that so far transaction in respect of original respondent Nos. 1 and 2 have been taken place on 5/2/2003 and 30/5/2003 and on 30/4/2002. The learned Counsel submitted that even other transactions have been taken place in 2004 and 2006 and, therefore, learned Counsel would submit that law of limitation would be applicable in the instant case and since the application is filed after 3 years from some of the transactions, such application which is time barred, can not be considered and the trial Court has rightly rejected said application. The learned Counsel submitted that, on perusal of the application, the application is silent about date of knowledge of the said transactions to the petitioner and, therefore, even assuming for a moment that the petitioners have got the knowledge of sale transactions at belated stage, nothing has been brought in the application to show that the petitioner came to know about said sale transactions on particular date or year. Therefore, learned Counsel would submit that on this ground also, this Writ Petition deserves to be rejected. For rest of the contentions, he relied upon the arguments advanced by the learned Counsel appearing for other respondents.

14. The learned Counsel for Respondent No. 10 submitted that the respondent No. 10 is a public trust and bonafide purchaser of the property. Being unaware about the pending dispute, the respondent No. 10 has purchased the property and being a public trust, is a bonafide purchaser of the property and unless permission is sought from the Charity Commissioner, no Suit can proceed against Respondent No. 3. The learned Counsel in support of his contention, relied on following two Judgments of the Apex Court, in case of (1) P.K. Ramachandran Vs. State of Kerala and Another, & (2) Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai (deceased) Thr. LRs., .

15. I have heard respective counsels appearing for the respective parties at length, on careful perusal of Judgments relied by the parties, it appears to me that, the facts of the present case are more akin to the reported Judgment of the Hon'ble Apex Court in case of Savitri Devi (cited supra).

16. The Judgments cited on behalf of respondents to contend that, the

purchasers during pendency of Suit are not necessary parties, are the Judgments in which purchasers have filed applications to the Court below praying that they may be impleaded as party respondent to the Suit so that they can protect their interest. In the facts of those cases, the Apex Court has taken a view that such transactions during the pendency of the Suit are hit by " doctrine of lis pendens " and, therefore, the subsequent purchasers are not necessary parties. It appears that in those cases, the view taken by the Hon"ble Apex Court is keeping in view that, such addition of the parties on the request of the purchasers, would prolong and delay the pending proceedings of the Suit and, therefore, the Court declined to entertain such prayer.

On careful perusal of paragraph 9 of the Apex Court Judgment in case of Bibi Zubaida Khatoon (cited supra), the Court has observed that, " It is true that when the application for joinder based on transfer pendente lite is made, , the transferee should ordinarily be joined as party to enable him to protect his interest ". However, the Court on the facts of that case, held that the purchasers are not necessary parties in the Suit. In the said Judgment, the Court has also referred reported Judgment of the Apex Court in case of Savitri Devi (cited supra). The Hon"ble Apex Court in case of Dhanlakshmi and Ors. v. P. Mohan and Ors. Reported in 2007 AIR SCW 954 in paragraph 5 held that,

Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the Suit, which is now pending before the trial Court.

17. There is no dispute about the ratio laid down by the Hon"ble Apex Court in case of Sanjay Verma (cited supra), the principle specified in Section 52 of the Act are in accordance with the equity, good conscience, justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee is bound by the Decree just as much as he was party to the Suit. The principle of lis pendens embodied in Section 52 of the Act being a principle of public policy, no question of good faith or bona fide arises. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the Suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

18. As already observed herein above, the present case stands on different footings than the facts in the cases cited by the learned Counsels appearing for the respective respondents. Firstly, the application for impleading purchasers as a party to the Suit and for amendment of the Suit is filed by the plaintiffs themselves contending therein that, it would be difficult for the plaintiffs in case purchasers file separate Suit and they have to defend themselves or in case

decree is passed in favour of the plaintiffs, it would not be possible to execute the said decree against the purchasers in view of their absence as a party respondent to the Suit. Secondly, in the present case, there is an order of injunction operating against the defendants in a Suit filed by the petitioners and during operation of the injunction order, the proposed respondents have purchased the properties from the original defendant Nos. 1 and 2 and subsequent purchasers have purchased from respondent Nos. 3 and 4, therefore, the facts of this case as already stated, are more akin to the reported Judgment of the Apex Court in case of Savitridevi (cited supra). In that case also, there was order of injunction made by the Court. Therefore, the Hon'ble Apex Court, taking into consideration the fact that injunction order was running in favour of plaintiffs and against the defendants, came to the conclusion that the purchasers are necessary parties to the Suit to see that the purchasers were bonafide transferee for value in good faith and whether they have committed the breach of injunction order granted by the Court below. It is also observed by the Apex Court in paragraph 8, if the application of impleadment is thrown out without decision, then the purchasers i.e. respondent Nos. 3 to 5 in that case, will certainly come up with separate Suit and there will be multiplicity of litigations. In such circumstances, it can not be said that respondent Nos. 3 to 5 in that case are neither necessary nor proper parties. The Apex Court in paragraph 9 held that,

Order I, Rule 10 C.P.C. Enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the Suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

19. Therefore, in my considered view, the facts of the present case as stated herein above are different than the facts in the case cited on behalf of respondents. There is no dispute that the ratio laid down in those cases governs the field. However, in the facts of this case, the ratio laid down by the Apex Court in case of Savitri Devi (cited supra) is applicable since the facts of this case are more akin to the facts of that case.

The provisions of Order I Rule 10 of CPC enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the question involved in the Suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. Therefore, the above interpretation of Order I Rule 10 of the CPC by the Hon'ble Apex Court in case of Savitri Devi is squarely applicable to the case in hand. Therefore, in my considered view, the proposed respondents in this petition are necessary parties to the Suit filed on behalf of petitioner/plaintiff before the Court below.

20. I find some substance in the contention of the learned Counsel for

respondent Nos. 1, 5 to 7 and 9 and counsel for respondent No. 10 that law of limitation will have application in the present case since the application filed by the petitioner is at belated stage and the respondent No. 10 being public Trust, permission of the Charity Commissioner would be necessary to sue respondent No. 10. It will be open for these respondents to agitate these points before the trial Court once they became party respondent to the Suit.

21. The prayers made in the application are two fold. The first prayer is to add the proposed respondents as party to the Suit and second prayer is for the amendment of the plaint. So far first prayer is concerned, as already concluded, the proposed respondents are necessary parties to the Suit. Therefore, the trial Court is directed to allow the petitioner to amend the plaint and add the proposed respondents as party to the Suit. So far second prayer of the petitioner is concerned, the amendment to the plaint is at very belated stage and the trial Court has rightly held that the said prayer can not be allowed for two reasons, firstly, the amendment is at belated stage and secondly it will change the nature of Suit. On careful perusal of the Judgment impugned and on careful perusal of the application filed by the petitioner for the amendment of the plaint, I am of the considered view that the amendment which the petitioner wish to bring to the plaint, would certainly change the nature of the Suit. Hence, the said prayer of the petitioner is rightly rejected by the trial Court. I do not see any reason to interfere in to that part of the order. Therefore, in the result, the petition is partly allowed. It is concluded that the proposed respondents in this petition are necessary parties to the Suit. However, the prayer to amend the plaint is rejected. Rule is made absolute to the above extent. The Writ Petition is partly allowed to the above extent. Writ Petition stands disposed of. Civil Application is disposed of in view of disposal of main Writ Petition.