

(2017) 08 BOM CK 0145
In the Bombay High Court
Case No : 1457 of 2016

M/s. Golechha Housing and Infrastructure Pvt. Ltd.

APPELLANT

Vs

Shri Sanjay S/o. Mohan Rao, & Ors.

RESPONDENT

Date of Decision : 08-08-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#), [Order 1 Rule 10\(2\)](#)

Citation : (2017) 08 BOM CK 0145

Hon'ble Judges : S.C.Gupte

Bench : SINGLE BENCH

Advocate : A.G.Gharote, Shyamal Kadu, M.S.Mendhe

Judgement

1. Heard learned counsel for both parties.
2. RULE. Rule made returnable forthwith and taken up for hearing by consent of the parties.
3. This petition challenges an order passed by the Civil Judge Senior Division, Nagpur on 19th November, 2015. By this order, the learned Judge allowed the application for impleadment filed by respondent No.3 herein.
4. The facts in brief leading to the respondent's application for impleadment and the order passed thereon may be noted as follows: The suit property in the present case belonged to one B.Vyankanna Somayya, also known as Hanumantrao, who died in the year 1950. Before his death, Hanumantrao had executed a will in respect of the suit property. Under this will, the suit property was bequeathed to Narayan Rangrao, who was the only relation of late Hanumantrao. A probate was granted in respect of the will by the Additional District Judge, Nagpur. The order granting probate was challenged in an appeal before this Court. The appeal was dismissed by the Division Bench of this Court confirming the finding of the District Judge. Pursuant to this order, Rangrao filed Succession Case No.1 of 1955, in which a Succession Certificate was issued by

the Civil Judge (Class I), Nagpur on 2nd July, 1955. Subsequent to this Succession Certificate, Rangrao executed sale deeds on 13th February, 1956 and 8th February, 1957 conveying the property to Jaglal Jaiswal for a valuable consideration. As a result of inter se disputes between members of Jaiswal family, the matter pertaining to the title of the suit property became the subject matter of a civil suit between them, being Regular Civil Suit No. 212 of 1991. A decree was passed in this suit on 26th September, 1996, restraining one branch of Jaiswal family perpetually from executing any transfer in respect of the suit property. This decree was based on a judgment holding that by a family arrangement between Jaiswals, the property was allotted to one Kishanlal Jaiswal and the plaintiffs being legal representatives of Kishanlal (since deceased) were legally entitled to the same. The judgment and decree was challenged by some of the family members of Jaiswals by way of an appeal. There was a delay in filing that appeal and as a result, an application for condonation of delay was moved on behalf of the appellants. That application was dismissed by the District Judge, Nagpur. The matter rested at that and there was no further challenge to the title of the plaintiffs in that suit, who were legal representatives of the deceased Kishanlal. On or about 2nd November, 2006, the present petitioner claims to have purchased this property from the plaintiffs in Regular Civil Suit No. 212 of 1991. Sometime in 2008, respondent No.1 herein filed a civil suit along with an application in forma pauperis before the Civil Judge Senior Division, Nagpur. The suit was registered as Special Civil Suit No. 101 of 2013. Respondent No.1 impleaded legal representatives of deceased Kishanlal, who were all plaintiffs in Regular Civil Suit No.212 of 1991, as defendant Nos. 1 to 20 and the present petitioner is defendant No.21. The prayer of respondent No.1 in that suit was for a declaration of his ownership of the suit property. He claimed to be a successor of the suit property by way of intestate succession from the deceased Hanumantrao. He prayed for delivery of possession of the suit property based on his title. A compromise was arrived at in this suit between respondent No.1 herein (plaintiff in that suit) and the petitioner herein (defendant No.21 in that suit). (Jaiswals who were arrayed as defendant Nos. 1 to 20 already deleted from the array of parties as respondent No.1 did not desire to prosecute them). When the compromise was presented to the Civil Judge Senior Division for passing a decree in terms thereof, the present respondent No.3 applied for intervention in the suit, praying for addition as a party defendant. This application was allowed by the learned Judge in the impugned order. The learned Judge held that for effectual and complete adjudication of the dispute about the ownership of the property, the applicant was required to be added as a party defendant, such addition would help the parties to settle all the questions involved in the suit. This order is challenged in the present petition.

5. It is trite to say that the plaintiff being dominus litis always has an option to choose his opponents. The plaintiff cannot ordinarily be compelled to sue any person against whom he does not seek any relief. There are, of course, some wellknown exceptions to this ordinary rule and those are contained in the

provisions of Order 1 Rule 10(2) of the Code of Civil Procedure. The plaintiff's choice apart, the Court has the discretion to add or strike out any party to the suit under Rule 10(2) of Order 1. Insofar as addition is concerned, a party which ought to have been joined (necessary party), that is to say, a party in whose absence no decree can be passed in the suit, or a party whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit (proper party), may be added by the Court in its discretion as a party to the suit.

6. In the present case, it cannot obviously be suggested that respondent No.3 herein is a necessary party in the sense that in her absence no decree could be passed in the suit for declaration filed by the plaintiff (respondent No.1 herein).

7. Let us now consider if the applicant can be impleaded as a proper party. The suit filed by respondent No.1 herein seeks a declaration of his rightful ownership of the suit property. It also seeks a declaration that the defendants, who include the Jaiswals claiming through the deceased Kishanlal (defendant Nos. 1 to 20) as well as the petitioner herein (defendant No.21 to the suit) claiming a transferee of the Jaiswals, are not legal owners of the suit property. The sale deed executed by Jaiswals in favour of the petitioner herein was sought to be challenged in the suit as illegal, null and void. The question now is, can it be said that the presence of respondent No.3 who claims as agreement purchaser under respondent No.1 (plaintiff to the suit) is necessary to effectually and completely adjudicate upon and settle the questions raised by respondent No.1 in the suit and contested by the Jaiswals and the petitioner herein.

8. In a challenge filed by respondent No.1 to the sale deed executed by Jaiswals in favour of the petitioner herein, Respondent No.3 is a complete stranger. The question in the suit is whether Jaiswals had the title to the suit property and whether it was duly conveyed by Jaiswals in favour of the petitioner herein. Respondent No.3 has nothing to contribute either by way of defence or attack insofar as this question is concerned. She claims independently of both, i.e. Jaiswals and the petitioners. Her presence is not even necessary to convey or pass on any title to any of the parties to the suit, since she merely claims as an agreement purchaser. She has admittedly filed her own suit seeking specific performance of her alleged agreement for sale against respondent No.1 (plaintiff). Both Jaiswals as well as the petitioner herein are parties to that suit. In any event, any decree that may be passed in the present suit based on the compromise between the parties or otherwise can never bind respondent No.3. She succeeds or fails on the merits of her own case as an agreement purchaser under respondent No.1.

9. Learned counsel for respondent No.3 relies on the judgment of the Supreme Court in the case of Baluram vs. P. Chellathangam, reported in 2010(7) SCC 417, in support of his case that respondent No.1 is a proper party in the present suit. In fact, the Supreme Court in this case went on to explain that a person, who is neither necessary nor proper party, cannot be impleaded as a party to the

suit against the wishes of the plaintiff, even if such a person is likely to secure some right or interest in the suit property after the suit is decided against the plaintiff. Relying on the principles of law laid down in the wellknown case of Kasturi vs. Iyyamperumal, reported in AIR 2005 SC 2813, the Supreme Court held the following persons to be necessary parties : i) parties to the contract which is sought to be enforced or their legal representatives; and

ii) a transferee of the property, which is the subjectmatter of the contract.

No doubt the Court also held that a person who has a direct interest in the subjectmatter of the suit for specific performance of an agreement for sale may also be impleaded as a proper party on his application under Order 1 Rule 10. The present suit, though, is not suit for specific performance. The present suit is for declaration of the plaintiff's title and for setting aside of the saledeed executed between the defendants in respect of the suit property. Respondent No.3 is neither a transferee of the suit property nor does she have any right to challenge the transfer as between Jaiswals and the petitioner within the framework of the present suit.

10. Even if a compromise decree were to be passed on the application of the plaintiff and defendant No.21, the applicant/ respondent No.3 herein would have no right to challenge such a decree. The compromise decree is merely based on the agreement arrived at between the parties to the suit which gets a seal of approval from the Court. Any stranger to the suit is obviously a stranger to the compromise. He cannot file any application in the suit to challenge the compromise decree, as he is not a party to the suit. In fact, that is the basis on which the bar under Rule 3A of Order 23 is not extended to him. That provision is confined merely to the parties to the suit who are parties to the compromise. I am fortified in this view by the judgment of a learned single Judge of our Court in the case of Khalil Haji Bholumiya Salar ..Vs. Praveen Sayyedudin, reported in 2013(6) Bom.C.R. 841.

11. In the premises, the impugned order of the Civil Judge Senior Division cannot be sustained. Respondent No.3 being neither a necessary nor a proper party to the suit as between respondent No.1 on one hand and Jaiswals and the petitioner herein on the other, cannot be impleaded against the wishes of respondent No.1 (plaintiff) in his suit.

12. In that view of the matter, the petition is disposed of in terms of the following order: i) The impugned order, dated 19th November, 2013, passed by the Civil Judge Senior Division, Nagpur is quashed and set aside.

ii) The application for impleadment moved by respondent No.3 (being Exh.No.52 in Special Civil Suit No.101/2013) is dismissed.

13. Rule is accordingly made absolute. There will be no order as to costs.

14. On the application of respondent No.3, this order is stayed for a period of four weeks from today.