
(2014) 01 BOM CK 0231
In the Bombay High Court
Case No : Writ Petition No. 2499 of 2013

Yogesh

APPELLANT

Vs

Keshav Vistari Sontakke and Others

RESPONDENT

Date of Decision : 18-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 151
Transfer of Property Act, 1882 — Section 52

Citation : (2014) 3 ALLMR 328 : (2014) 5 MhLj 53

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : B.M. Kharkate, Advocate for the Appellant

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—Notices for final disposal of the matter were issued by this Court on 09-5-2013. In spite of service of notices, none appears for the respondents. It is, therefore, not necessary for this Court to issue fresh notices. Rule, made returnable forthwith. Heard Shri B.M. Kharkate, the learned Counsel appearing for the petitioner.

2. By the impugned order dated 20-11-2012 passed by the Civil Judge (Jr.Dn.), Bramhapuri, the application Exhibit 37 filed in Regular Civil Suit No. 59 of 2010 under Order I Rule 10(2) read with Section 151 of the CPC by the petitioner for being joined as plaintiff in the suit, has been rejected. The trial Court has held that on the date when the suit was filed the petitioner was not the owner of the suit property, but the original plaintiffs had claimed the ownership of the suit property. The petitioner claims to have purchased the suit property during the pendency of the suit by registered sale-deed dated 26-7-2011. The trial Court has held that the transfers during the pendency of the suit are hit by principle of lis pendens incorporated u/s 52 of the Transfer of Property Act. It has been held that in such circumstances, it cannot be said that the presence of such person may be necessary in order to enable the court effectively and completely to

adjudicate upon and settle all the questions involved in the suit.

3. The provision of Order I Rule 10(2) of the CPC permits the Court to add any person whether as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit. Merely because the transfer, during the pendency of the suit, is hit by the principle of lis pendens that cannot operate as bar for the Court to exercise power under Order I Rule 10(2) of the CPC to permit subsequent purchaser for being added as a plaintiff. The petitioner has stated that he has stepped into the shoes of the plaintiffs and hence, he needs to be provided an opportunity to prosecute or contest the suit, so as to settle all questions involved in the suit. The trial Court has erred in rejecting the application Exhibit 37, which needs to be quashed and set aside.

4. In the result, the writ petition is allowed. The order dated 20-11-2012 passed by the Civil Judge (Jr.Dn.), Bramhapuri below Exhibit 37 in Regular Civil Suit No. 59 of 2010 is hereby quashed and set aside. The application Exhibit 37 filed by the petitioner is allowed to the extent of permitting the petitioner to be joined as plaintiff in the suit. Rule is made absolute in the above terms. No order as to costs.