



ORDER BELOW EXH.34 IN R.C.S. NO.191/2023

(CNR No. MHWS02001107-2023)

Nandkishor Somani Vs. Talathi, Ansing & Ors.

1] Applicant No.1 Dilip s/o. Shankarlal Heda & applicant No.2 Rahul s/o. Rameshchandralal Lahoti have filed this application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') praying that they be impleaded as defendant Nos.6 & 7 *respectively* in the suit.

2] **Contents of this application, in nutshell, are as follows :-**

The plaintiff has filed the present suit for perpetual injunction to the effect that defendant Nos.1 & 2 (who are Revenue Officers) be restrained from acting upon the mutation entry No.5152 which was sanctioned on the basis of the sale deed dated 01/09/2023 pertaining to the land admeasuring 00 H. 81 Are out of Block No.447 total admeasuring 03 H. 65 Are situated within the jurisdiction of village Ansing, Tq. & Dist. Washim, more particularly described in para No.1 of the plaint (for short 'suit land') till decision of R.C.S. No.82/2019 & Spl.C.S. No.42/2022. Applicants have further stated that they are bonafide purchasers of the suit land as they have purchased it from partners of the Firm 'Mauli Developers' by way of registered sale deed dated 01/09/2023 for

consideration of Rs.1,25,00,000/-, and however, they were put in possession of the suit land on dated 01/09/2023 itself. Applicants have, thus, stated that they are owners & possessors of the suit land.

3] It is further contention of applicants that the plaintiff has also stated in para No.9 of the plaint that partners of 'Mauli Developers' have sold the suit land to them on dated 01/09/2023. It is, thus, contention of applicants that they have right & interest in the suit land & therefore, they are necessary parties for decision of the suit. According to them, if this application is not allowed, they will suffer irreparable loss. With this, applicants have prayed that this application be allowed.

4] The plaintiff has filed his say on overleaf of this application. He has stated that this application is not maintainable as he has not sought any relief against applicants. He has further stated that the sale deed dated 01/09/2023 is hit by Section 52 of the Transfer of Property Act, 1882. According to the plaintiff, there is no satisfactory & convincing ground for impleading applicants in the suit. With this, the plaintiff has prayed for rejection of this application.

5] I have heard Ld. Advocate Mr. Belokar for applicants & Ld. Advocate Mr. Deshmukh for the plaintiff at considerable length. I have also gone through the record of the suit.

6] Ld. Advocate Mr. Deshmukh for the plaintiff has placed his reliance upon following case laws, viz. -

i) Mohamed Hussain Gulam Ali Shariffi Vs. Muncipal Corporation of Greater Bombay & Ors., reported in 2017 (6) ALL MR 420 (SC), wherein it has been held by Hon'ble Supreme Court that *'in a suit for deciding legality as to notice for demolition of the structure of the suit property issued by Municipal Corporation, applicants/petitioners who claim to have purchased the suit property are neither necessary nor proper parties'*.

ii) Mrs. Sulbha Devendra Kokate Vs. Mrs. Surekha Kokate & Ors., reported in 2022 (1) ALL MR 152, wherein it has been held by Hon'ble Bombay Court that *'in a suit in respect of challenging demolition notice pertaining to the suit property issued by Corporation, the Corporation is only necessary & proper party ; and therefore, applicant/petitioner who claims that he has interest in the suit property cannot be impleaded in the suit'*.

7] Reverting back to the suit at hand, I would like to mention that the plaintiff has pleaded in the plaint that applicants are not in possession of the suit land. However, applicants have stated in this application that they are in possession of the suit land. So far as the issue involved in the case laws cited *supra* is concerned, it is seen that the said issue relates to legality of demolition notice issued by the Municipal Corporation. As possession of the suit land is in dispute between the plaintiff & applicants, I say, with all respect, that ratio laid

down in case laws cited *supra* is not applicable to the suit at hand. In my considered view, the presence of applicants before the Court is necessary to enable the Court effectually & completely to adjudicate upon & settle all questions involved in the suit. However, it is pertinent to note that if this application is allowed, no prejudice will be caused to the plaintiff. Therefore, I have no hesitation to hold that this application deserves to be allowed. With this, I proceed to pass the following order -

ORDER

- 1] Application Exh.34 is allowed.
- 2] The plaintiff shall implead in the plaint the applicant No.1) Dilip s/o. Shankarlal Heda & applicant No.2) Rahul s/o. Rameshchandralal Lahoti as defendant Nos.6 & 7 *respectively* till next date, and shall supply copies of the amended plaint as early as possible.
- 3] Thereafter, suit summons be issued to proposed defendant Nos.6 & 7.
- 4] No order as to costs.
- 5] Parties to the suit shall take note of this order.

(Dictated & pronounced in the open Court)

CERTIFICATE

I affirm that the contents of this PDF file Issues are same word to word, as per original Issues.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 12/08/2024
- 4) Order signed by the
presiding officer on :- 12/08/2024
- 5) Order uploaded on :- 13/08/2024