

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9305 OF 2015

Sunita Enterprises

.. Petitioner

Versus

Shri. Sudhakar Budhaji Bubera and others

.. Respondents

**Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Jaydeep Deo, for the
Petitioner.**

CORAM : R.M. SAVANT, J.

DATE : 1st OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 11.09.2015 passed by the Learned 5th Joint Civil Judge Senior Division, Thane, by which order the application Exh.56 filed by the Petitioner under Order 1 Rule 10 of the CPC for being impleaded in the suit in question being Regular Civil Suit No.480 of 2014 came to be rejected. The said suit being Regular Civil Suit No.480 of 2014 is for partition and is between the Respondents inter-se who are the owners of the property. To the said suit are arrayed the Defendant Nos.12 to 14 who have a Development Agreement from both the Plaintiffs and the Defendants in the instant suit. It is required to be noted that the Defendant Nos.12 to 14 of the instant Petition have filed their own

independent suit for specific performance being Special Civil Suit No.294 of 2013 against the Plaintiffs and the Defendants of the instant suit i.e. the Respondents herein. The Petitioner has also filed its own suit being Special Civil Suit No.180 of 2015 for specific performance of the Development Agreement dated 03.07.2003 executed in favour of the Petitioner/Plaintiff by the heirs of Budhaji Buberu who are the Respondents above named. The Petitioner had earlier filed an application Exh.48 which came to be rejected by the Learned 6th Joint Civil Judge Senior Division, Thane by order dated 02.03.2015. The Learned Judge has taken into consideration the fact that the Development Agreement has been terminated by the Plaintiffs. After the said application Exh.48 came to be rejected that the instant application Exh.56 came to be filed. The Trial Court has rejected the instant application on the ground that the earlier application has been rejected, by reiterating the reason mentioned in the order dated 02.03.2015 namely that the Development Agreement 03.07.2003 has been terminated by the Plaintiff. In my view, having regard to the fact that the instant suit being suit for partition between Respondents inter-se who are the family members and since the Petitioner has also filed his own suit for specific performance i.e. Special Civil Suit No.180 of 2015, the Petitioner can neither be said to be a necessary party nor a proper party to the instant suit. Hence, no fault can be found with the order rejecting the

application Exh.56 passed by the Trial Court. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.