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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 11894 OF 2015**

Sunita Dagadu Patange-Koli and others

.. Petitioners

Vs.

Shri Dagadu Genu Koli and others

.. Respondents

Mr.Milind R.Deshpande, Advocate for the Petitioners.

**CORAM : R.G.KETKAR, J.**

**DATED : 03<sup>rd</sup> DECEMBER, 2015**

**P.C. :**

. Heard Mr.Milind R.Deshpande, learned Counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 09/10/2015 passed by the learned Principal District Judge, Solapur below Exhibit 43 in Regular Civil Appeal No. 172 of 2010. By that order, the learned District Judge rejected the application made by the petitioners under Order 1 Rule 10(2) of Code of Civil Procedure, 1908 for impleading them as party in the Appeal. While rejecting the application, the learned District Judge noted that original defendant No.4 had instituted Special Civil Suit No. 156 of 1974 for specific performance of contract. The Suit was decreed exparte on 23/07/1975. Original defendant No.1 filed application No. 54 of

1976 for setting aside ex parte decree. That was also dismissed and the decree passed in Suit for specific performance became final. In pursuance of that decree, defendant No.4 got the sale deed executed through the Court Commissioner. Defendant No.4 in turn sold the property to defendant No.6 to 9. Insofar as present Appeal is concerned, Suit instituted by the plaintiffs namely Suit No. 48 of 1985 was dismissed. The learned District Judge, therefore, held that the sale deed is already executed and the property is parted with. It cannot be said that applicants herein have any interest and right in the subject matter of the Suit.

3. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

**(R.G.KETKAR, J.)**