

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5624 OF 2015

Satyajeet s/o Chandrashekhar Kadam,
Age 34 years, Occu. Agriculture &
Business, R/o Deolali Pravara,
Taluka Rahuri, Dist. Ahmednagar

..Petitioner

Versus

1. Bapusaheb s/o Gopinath Kadam,
Age 57 years, Occu. Agriculture,
R/o Deolali Pravara, Taluka Rahuri,
District Ahmednagar

2. Sau. Aanagha w/o Vishwanath Joshi
Age 58 years, Occu. Household,
R/o at present M.S.E.B. Colony,
Jail road, Nashik road, Nashik

..Respondents

Mr R.N. Dhorde, Senior Counsel i/b Mr V.R. Dhorde, Advocate for
petitioner

Mr V.D. Hon, Senior Counsel i/b Mr A.V. Hon, Advocate for respondent
No.1

Mr V.N. Shelke, Advocate for respondent No.2

CORAM : T.V. NALAWADE, J.

DATE : 24th August 2016

PER COURT

Rule. Rule made returnable forthwith. By consent, heard both
the sides for final disposal.

2. The petition is filed to challenge the order made on Exh.226 in
Regular Civil Suit No.283 of 2000, which is pending in the Court of
Civil Judge, Junior Division, Rahuri, District Ahmednagar. The said suit
is filed by Smt. Joshi, present respondent No.2 against Bapusaheb
Kadam and in the suit counter claim is filed by Bapusaheb
Kadam and he has claimed relief of injunction. During pendency of
the suit, present petitioner purchased the suit property from

respondent No.1 Smt. Joshi and so he wanted to come on record as party - defendant in the counter claim filed by Bapusaheb Kadam. Heard both the sides.

3. The suit was filed for relief of possession by Smt. Joshi and it appears that she has filed purshis that she does not want to prosecute the suit. The petitioner is relying on sale-deed executed by said Smt. Joshi in his favour and he is also relying on the agreement made by said Smt. Joshi and Bapusaheb Kadam to sell the property in favour of present petitioner.

4. Learned Judge of the trial Court has rejected the application by holding that the evidence is already on record and present petitioner came in picture only when the matter was fixed for final arguments.

5. The aforesaid reasoning given by the trial Court cannot sustain in law. The suit is filed for relief of injunction by Bapusaheb Kadam and it is his case that he is in possession under agreement of sale made in his favour many years back. Smt. Joshi has now lost interest in the matter and so, purchaser wants to defend the matter. Learned Senior Counsel for the petitioner placed reliance on the observations made in the judgment of Apex Court in **2013 (5) SCC 397 (Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and ors.)**. In that matter, there was transfer of the property during pendency of the suit filed for specific performance. In that case also, the Court granted permission to the purchaser. The case of the present petitioner is on better footing, as Bapusaheb Kadam has claimed only relief of injunction against the owner and now, present

petitioner is the owner of the suit property. In view of these circumstances, this Court hold that the trial Court committed error in rejecting the application.

6. In the result, Writ Petition is allowed. The order dated 1.4.2015 passed below Exh.226 in Regular Civil Suit No.283 of 2000 by Civil Judge, Junior Division, Rahuri, District Ahmednagar is set aside and that application is allowed and the present petitioner is allowed to come on record as defendant in counter claim.

7. Rule is made absolute in aforesaid terms.

(T.V. NALAWADE, J.)

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