

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

WRIT PETITION NO. 5360 OF 2015

Sangram S/o Vyankoba Boje and others .. Petitioners

Versus

Tukaram S/o Vyankoba Boje and others .. Respondents

Shri Dhananjay P. Deshpande, Advocate for Petitioners.
Shri D. S. Mali, Advocate h/f Shri R. P. Adgaonkar, Advocate for
the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 22ND MARCH, 2016.

PER COURT :

. Mr. Deshpande, the learned counsel for petitioners submits that, the respondent No. 1/plaintiff has filed suit for partition and separate possession in which defendant No. 6 was purchaser of the some portion of the said property. There are three suit properties. One property is sold by the defendant No. 1 to defendant No. 6. The said sale deed is also challenged. On the death of defendant No. 6 the legal heirs of defendant No. 6 are not brought on record, as such the whole suit abates. According to the learned counsel, the said aspect has not been considered by the Court in its correct perspective. The defendant No. 6 would step into the shoes of the defendant No. 1. The purchaser would be a necessary party. The learned counsel submits that in the

suit for partition and separate possession each party is in the position of the plaintiff. The relief with regard to the sale deed cannot be granted in absence of the defendant No. 6 it would affect all the properties.

2. The property purchased by defendant No. 6 is not the sole property involved in the suit. There are two other properties in the suit. What are the consequences of the suit being abated as against defendant No. 6 and with regard to the sale deed the same would follow. The Court would consider the same at the time of final decision of the suit. However, it cannot be said that the whole suit would abate, the coparceners are parties to the suit. The other properties are also there.

3. Considering the above, no case for interference is made out. The writ petition is dismissed. No costs.

[S. V. GANGAPURWALA, J.]