

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

Writ Petition No.7480 of 2016

- 1) Jagannath Yeshwant Todmal,
Age 71 years,
Occupation : Agriculture.
- 2) Bhausahab Jagannath Todmal,
Age 56 years,
Occupation: Agriculture & Service.
- 3) Tukaram Rama Todmal,
Age 69 years,
Occupation: Agriculture.
- 4) Sampat Rama Todmal,
Age 59 years,
Occupation: Agriculture.

All R/o Todmalwadi,
Taluka Ahmednagar,
District Ahmednagar.

.. Petitioners.

Versus

- 1) Kisan Bahiru Todmal,
Deceased through legal
representatives.
- 2) Nirmala Balasaheb Najan,
Age 39 years,
Occupation Agriculture
R/o Bahirwadi,
Taluka Ahmednagar,
District Ahmednagar.
- 3) Shrimant Laxman Todmal,
Deceased through his legal
representatives:

- 3A) Mithu Shrimant Todmal,
Age 49 years,
Occupation: Agriculture.
- 3B) Popat Shrimant Todmal,
Age 44 years,
Occupation: Agriculture.
- 3C) Vitthal Shrimant Todmal,
Deceased through legal
representatives:
 - 3C1) Sachin Vitthal Todmal,
Age 34 years,
Occupation: Agriculture.
 - 3C2) Chabbubai Vitthal Todmal,
Age 54 years,
Occupation: Agriculture.
- 3D Babu Shrimant Todmal,
Deceased through his
legal representatives
 - 3D1 Bhambai Babu Todmal,
Age 54 years,
Occupation: Agriculture.
 - 3D2 Raju Babu Todmal,
Age 39 years,
Occupation: Agriculture.
 - 3D3 Sanju Babu Todmal,
Age 34 years,
Occupation: Agriculture.
- 3E Dattu Shrimant Todmal,
Deceased through his
legal representatives
 - 3E1 Godabai Dattu Todmal
Age 59 years,
Occupation: Household.

3E2 Jitu Dattu Todmal,
Age 44 years,
Occupation: Agriculture.

3E3 Atul Dattu Todmal,
Age 39 years,
Occupation: Agriculture.

4) Sadashiv Genu Todmal,
Age 74 years,
Occupation: Agriculture.

5) Subhash Sadashiv Todmal,
Age 49 years,
Occupation: Agriculture.

Nos.1-3E, 3B, 3C, 3C-1 & 3C-2,
4 and 5 are residents of
Tomalwadi,
Taluka & District Ahmednagar.
Nos.3D-1 to 3D-3 & 3E-1 to 3E-3
are residents of Khairewadi,
Shivajinagar, Pune.

.. Respondents.

Ms. Suvarna Wadekar, Advocate holding for Shri.
Santosh S. Jadhavar, Advocate, for petitioners.

Smt. C.S. Deshmukh, Advocate, for respondent Nos.4 & 5.

CORAM: T.V. NALAWADE, J.

DATE : 13 DECEMBER 2016

ORAL JUDGMENT:

1) Rule, rule made returnable forthwith. Heard
both sides by consent for final disposal.

2) In the suit filed for relief of declaration of ownership by the present petitioners, the petitioners had filed an application for amendment of the plaint. It is the case of the petitioner, plaintiff that under sale deeds dated 3-1-2011 and 16-1-2012 the suit property was transferred by defendant Nos.3 and 4 in favour of the person, party mentioned in the amendment application. Plaintiff wants to make him party defendant to avoid further complications. The plaintiffs have come with the case that mutations made in favour of respondent Nos.4 and 5 are sham and bogus and no title in respect of the suit property vests in them.

3) Learned counsel for the respondent, party who is to be added submitted that in the plaint itself there is mention of sale deeds of January 2011 and January 2012 and in view of these circumstances it can be said that plaintiffs did not show due diligence to make the purchaser party defendant in the suit. Similar observations are made by the trial Court.

4) If the plaintiffs succeed in proving their title over the suit property then the plaintiffs succeed in everything. If the relief of declaration is given in favour of the plaintiffs there will be no necessity to give declaration that sale deeds executed in the years 2011 and 2012 are not binding on the plaintiffs. As soon as decree of declaration is given in favour of the plaintiffs, other reliefs become consequential and even no specific relief with regard to that sale deeds are not binding will be required. The plaintiffs had mentioned in the plaint itself about the sale deeds. It can be said that it was the fault of the Advocate as he did not join the purchaser as party defendant to the suit. To have the decision on merits opportunity needs to be given to the plaintiffs to join the purchaser as defendant in the suit. Learned counsel for the respondent placed reliance on the case reported a **AIR 2009 SC 1948 (Alkapuri Co-operative Housing Society Ltd. v. Jayantibhai Naginbhai)**. This Court has observed that the point of limitation may not be available if the plaintiff is entitled to declaration that the plaintiff is the owner of the property and so this case will not help the respondent.

5) In the result, the petition is allowed. The application at Exhibit 101 is allowed. The plaintiff is permitted to amend the plaint and add Uday Karale as party defendant in the suit and also to add prayer mentioned in the application for amendment. Rule is made absolute in above terms.

Sd/-
(T.V. NALAWADE, J.)

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