

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

WRIT PETITION NO. 7548 OF 2016

Arvind Diliprao Patil

..PETITIONER

VERSUS

Saraswatibai Narayan Kalme and Others

..RESPONDENTS

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Mr. A.A. Yadkikar, Advocate for petitioner.

Mr. P.F. Patni, Advocate for Respondent No.1.

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CORAM : T.V. NALAWADE, J.

DATED : 01st DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibit 15 in Regular Civil Appeal No. 390 of 2012 which is pending in the Court of District Judge-4, Latur. The said application was filed by appellant – plaintiff to implead the present petitioner as party respondent in the appeal. Indirectly the appellant – plaintiff wants to make present petitioner as party defendant in the Regular Civil Suit No. 984 of 2000. Both sides are heard.

2. It appears that plaintiff had purchased some property in the year 1994. It is the case of the plaintiff that the same property is purchased by Defendant No.2 – Deelip Gurlingappa Dharne from Defendant No.1 and so cause of action took place. Suit was filed for mandatory injunction and

possession of the suit property. The suit is dismissed. It appears that during the pendency of the suit, the property was sold to petitioner and that was done in the year 2010. The suit was decided in the year 2012 by the Trial Court. Regular Appeal was filed and is still pending.

3. It was submitted for present petitioner / newly added party that if there was provision of Section 52 of the Transfer of Property Act, there was no need to implead the present petitioner in the matter. Learned Counsel submitted that it cannot be said that plaintiff was not aware that property was sold to petitioner and so in that suit, the plaintiff ought to have taken steps to implead the present petitioner as party defendant, but that was not done therefore plaintiff cannot be allowed to make purchaser as party defendant in appeal at appellate stage.

4. The aforesaid submissions made on behalf of the petitioner cannot be accepted. Another submission was made that the Trial Court has held that there are discrepancies in the description of the property shown to be purchased by the plaintiff and the property which the Defendant No.2 is claiming as purchased by him. That point needs to be decided on merits and that cannot be decided at present. In view of aforesaid facts, it can be said that if the property which was purchased by plaintiff was in possession of Defendant No.2 – Deelip Dharne and then come to present petitioner, to

avoid further complication it is desirable that purchaser is also made party to the proceeding. In such case, there will be no need to lead more evidence because right of present petitioner will not be different than right of defendant if the property purchased by petitioner is suit property.

5. Learned Counsel for respondent placed reliance on one case reported as **(2013) 5 ACC 397 (Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. and Others)**. In the said case, the Apex Court held that Court can invoke enabling provision of Order 22 Rule 10 of the Code of Civil Procedure and it is the choice of the plaintiff. Even provisions of Section 52 is available and so if the plaintiff wants to implead the purchaser as party defendant, he can be allowed to do so.

6. This Court holds that it is not possible to interfere in the order made by the Trial Court and so petition is dismissed.

(T.V. NALAWADE, J.)

SSD