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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8821 OF 2015

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| 1. | Shivaji s/o Sudam Suralkar
Age – 45 years, Occ – Agriculture
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar | PETITIONERS |
| 2. | Bhimraj s/o Sudam Suralkar,
Since deceased through LRs, | |
| 2A. | Smt. Mangalbai Bhimraj Suralkar,
Age – 41 years, Occ – Household
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar | |
| 2B | Sagar s/o Bhimraj Suralkar
Age – 16 years, Minor under
Guardianship of his mother
Smt. Mangalbai Bhimraj Suralkar,
Age – 41 years, Occ – Household
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar | |
| 2C | Pratiksha d/o Bhimraj Suralkar
Age – 13, Minor, Under
Guardianship of her mother
Smt. Mangalbai Bhimraj Suralkar,
Age – 41 years, Occ – Household
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar | |

VERSUS

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| 1. | Shivaji s/o Revaji Dumbare
Age – 48 years, Occ – Service & Agriculture
R/o A-302, Rishi Towers No.1,
Sant Meerabai Road,
Oppsite Rajnagar, Ghartanpada-2
Dahisar, Mumbai (East)
Dahisar, Maharashtra | RESPONDENTS |
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2. Smt. Bhagabai Sudam Suralkar,
Age – 70 years, Occ – Agriculture
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar
3. Sow. Latabai Sopanrao More,
Age – 43 years, Occ – Agriculture
R/o Dugalgaon, Post – Bokate
Taluka – Yeola, District – Nashik
4. Sow Hirabai Balasaheb Khokale
Age – 40 years, Occ – Agriculture
R/o Aadgaon Chothwa,
Taluka – Yeola, District – Nashik
5. Sow Shobha Ramesh yeole,
Age – 37 years, Occ – Agriculture
R/o Dhamode, Taluka – Yeola
District – Nashik
6. Sow Meenatai Navnath Pawar
Age – 34 years, Occ – Agriculture
R/o Sawargaon, Taluka – Yeola
District – Nashik
7. Nana Anna Suralkar,
Age – 75 years, Occ – Agriculture
R/o Yesgaon, Taluka – Kopargaon,
District – Ahmednagar

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Mr. Nitin R. Bhavar, Advocate for the petitioners
Mr. V. H. Dighe, Advocate for respondent No.1
Mr. P. D. Surwase, Advocate for respondents No.4 to 7

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned

advocates for the appearing parties finally with consent.

2. The petitioners are before this court aggrieved by order dated 17th July, 2015 passed by District Judge-1, Kopargaon on an application Exhibit-22 pursuant to Order I, Rule 10 of the Civil Procedure Code in Regular Civil Appeal No.5 of 2012.

3. It appears that the suit filed by the present petitioners, seeking possession of encroached area had been dismissed.

4. Learned advocates for the petitioners and respondent No.1 refer to various aspects, which may not be germane from the point of view of the writ petition against order on Exhibit-22, which is intended for addition of parties to the appeal filed by the original plaintiffs.

5. According to learned advocate for respondent No.1, respondents No.1 and 2 are senior citizens and that the advocate engaged on their behalf is 89 year old. According to him, the respondents have transferred the suit property to the purchasers, after dismissal of the suit of present petitioners, unwary of the further proceedings in appeal.

6. Looking at that the parties do not dispute that alienation has taken place during pendency of the appeal, the reasons

which have weighed with the appellate court, whether the purchasers being essential and necessary parties to the appeal, may in the circumstances to a considerable extent, having regard to the events those have occurred, would be of little significance. It may not be that the purchasers would be essential and necessary parties, yet, it is not the case where they cannot be said to be proper parties, especially having regard to the events as those have occurred, subsequent to the dismissal of the suit. It is the property and the claims of the respective parties to the same which is at stake in the matter. In view of the same, I deem it appropriate that instead of approaching the matter pedantically, it would be in the interest of the parties to allow application Exhibit-22.

7. In the circumstances, writ petition is allowed. Rule is made absolute in terms of prayer clause "B". Application Exhibit-22 in Regular Civil Appeal No.5 of 2012 pending before District Judge-1, Kopargaon stands allowed.

[SUNIL P. DESHMUKH, J.]