

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

908 WRIT PETITION NO. 10406 OF 2016

BALAJI RAJA KUBERRAO JANKAR
VERSUS
MAHANANDABAI PANDITRAO JANKAR AND OTHERS

...
Advocate for Petitioner : Bade Patil K.d.

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CORAM : T.V. NALAWADE, J.
DATED : 14th October, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Nanded on Exh. 37 in Regular Civil Suit No. 281/2012. Heard the learned counsel for petitioner.

2. The suit is filed for relief of specific performance of contract of sale by respondent No. 1 against father and grand-father of present petitioner. It is the case of petitioner that the suit property was given to him in family partition and so, he is necessary party to the suit. It is his case that his father and grand-father are not properly contesting the matter and due to that the District Court has granted relief of injunction in favour of plaintiff. It is his case that he is in possession of the property and so, his interest will be affected if the orders are made in the said

proceeding. The application filed by the present petitioner to make him party under Order 1, Rule 10 of Civil Procedure Code is rejected by the Trial Court.

3. In view of the provisions of section 19 of the Specific Relief Act and as admittedly, the present petitioner is not a party to the agreement, he cannot be called as necessary party to the suit. It is open to the plaintiff to make the present petitioner party to the suit. But the present petitioner has no right as such to appear as intervenor, as defendant. Further, the order of the Trial Court show that there is nothing with the plaintiff to show that he has vested right or title in the suit property. In any case, when petitioner is not necessary party to the suit, he cannot be allowed to come on the record as defendant only because he wants. There is no need to interfere in the order made by the Trial Court. So, the petition is dismissed.

[T.V. NALAWADE, J.]

SSC/