

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2606 OF 2016**

Mr. Arun Vaman Kekane (Kulkarni)	Petitioner
Vs	
Smt. Sushilabai Vaman Kekane (Kulkarni) & Ors.	.. Respondents

Mr.Mohan B. Gawade, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 11/03/2016

PC:

1. Heard Mr. Mohan Gawade, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 11.1.2016 passed by the learned District Judge-1, Khed-Rajgurunagar below Exhibit-19 in Civil Appeal No.391 of 2014. By that order, the learned District Judge allowed the application Exhibit-19 and directed respondents no.1 to 6 (appellants) to amend the plaint as also appeal forthwith.

3. Mr. Gawade submitted that respondents no. 1 to 6 instituted suit against the petitioner (original defendant) for partition and separate possession. Suit was dismissed by the trial Court. Aggrieved by that decision, respondents no. 1 to 6 preferred Civil Appeal No.391 of 2014. During pendency of the appeal, the petitioner sold property to one Ratnaprabha Babanrao Gofane. Respondents no.1 to 6, therefore filed

application Exhibit-19 under Order VI, Rule 17 of C.P.C. for impleading said Ratnaprabha Gofane as party defendant no.2 in the suit and respondent no.2 in Appeal. Respondents no. 1 to 6 also sought declaration that the sale deed dated 16.3.2015 is not binding on their share.

4. Mr. Gawade submitted that by the proposed amendment, nature of the suit is changed. In that, he submitted that apart from suit for partition respondents no. 1 to 6 -plaintiffs have sought declaration that the sale deed dated 16.3.2015 is not binding on their share. He submitted that this is nothing but harassing the petitioner-original defendant. He, therefore, submitted that the impugned order is liable to be set aside.

5. It is not in dispute that suit instituted by respondents no. 1 to 6 for partition and separate possession of their share was dismissed by the trial Court. Against that decision, respondents no. 1 to 6 preferred appeal which is pending in District Court. It is also not in dispute that pending the appeal the petitioner herein executed sale deed in favour of Ratnaprabha Gofane on 16.3.2015. It is also not in dispute that there was no interim order operating against the defendants from creating third party interest. Thus, during pendency of the appeal, the petitioner-defendant has executed sale deed in favour of Ratnaprabha Gofane. In these circumstances, at least the petitioner cannot complain and/or challenge the impugned order because it is the

petitioner who has sold the property during the pendency of the Appeal. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)