

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 11130 OF 2016

Shri Nitin Lahanu Bhagwat

.... Petitioner

Versus

Shri Tulasidas Dayaram More & Ors.

.... Respondents

Mr. Vineet Naik, Senior Advocate i/b Mr. Sachin Kadam for
Petitioner.

Mr. P.N.Joshi for Respondent Nos. 1 & 2.

Mr. S.A.Sawant i/b Mr. Samir Suryawanshi for Respondent No.3.

***CORAM : N. M. Jamdar J.
Wednesday 5 October 2016***

ORAL ORDER

. Heard learned Counsel for the parties.

2. The petitioner has challenged the order dated 25 July, 2016 rejecting the application filed by the petitioner for joining him as a co-appellant in Regular Civil Appeal No. 3 of 2016 filed by the respondent no.3/appellant. The suit was instituted by respondent nos. 1 and 2 against the respondent no. 3 on 3 May 2011 based on an agreement dated 26 September, 2007. The suit was decreed on 25 November, 2015.

3. It is the case of the petitioner that he purchased the property on 27 January, 2016 from respondent no.3 (defendant in the suit). An appeal is filed by the respondent no.1 in the District Court, Niphad challenging the Judgment and Decree passed in Special Civil Suit No. 75 of 2011 dated 25 November, 2015. The appeal is pending. In this appeal on the basis of the sale-deed stated to be executed in favour of the petitioner, the petitioner made an application for joining him as a co-appellant, which has been rejected by the impugned order.

4. The learned counsel for the petitioner relying upon the decisions of the Apex Court in Amit Kumar Shaw and Another ..Versus.. Farida Khatoon and Another, (2005) 11 Supreme Court Cases 403 and Thomson Press (India) Limited ..Versus.. Nanak Builders and Investors Private Limited and Others, (2013) 5 Supreme Court Cases 397 submitted that since the petitioner has purchased the property mentioned in the pending litigation, the petitioner be permitted to continue the appeal and join as a co-appellant in the appeal, as appeal is in continuation of the proceedings. It is submitted that no prejudice will be caused to the respondents if the petitioner is joined as the appellant. The learned Counsel for the respondent nos.1 & 2/original plaintiffs opposed the prayer.

5. The decisions which are relied upon by the learned Counsel for the petitioner do not arise from the factual situation

which is at hand. In the present case, the respondent nos.1 & 2/plaintiffs have succeeded and a decree is passed and thereafter the property is stated to be purchased. It is not that the petitioner is remediless, as the learned Civil Judge while disposing of the application has indicated that the remedy under Order 21 Rules 97 to 99 of the Code of Civil Procedure is available. This remedy will give an opportunity to the petitioner to put forth all the arguments which are sought to be advanced in this Court as well as will be advanced in appeal, as the obstructions in proceedings are to be disposed of with a detailed enquiry.

6. The learned Counsel for the petitioner submitted that some time may be granted to approach the executing Court with an application under Order 21 Rule 97 to 99 of the Code of Civil Procedure and Darkhast proceedings may not be executed till then. The learned Counsel for the respondents states that the parties should maintain status-quo as petitioner is likely to create third party rights.

7. I am of the opinion that view taken by the District Judge, Niphad in keeping open the view of the petitioner under Order 21 Rules 97 to 99 of the Code of Civil Procedure cannot be stated as illegal or perverse.

8. As far as time to the petitioner to avail of the remedy is concerned, it is directed that for a period of three weeks, the parties will maintain status-quo. Needless to state that if such application is made, the same will be decided on its own merits uninfluenced by the observations made in the impugned order as well as in the interim order in the appeal and the present order.

(N. M. Jamdar, J.)