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

WRIT PETITION NO.2030 OF 2016

1. Pradeep Pitambar Patil,
Age: 55 years, Occu: Business,
R/o. Sharda Nagar,
Tal. Bhusawal, Dist. Jalgaon
 2. Dr. Vijay Pitambar Patil,
Age: 63 years,
Occu: Retired Professor,
R/o. Sharda Nagar,
Tal. Bhusawal,
Dist. Jalgaon
- ..PETITIONER

VERSUS

1. Sitaram Gulabchand Agrawal,
Age: 71 years, Occu: Business,
R/o. Sarafbazar,
Tal. Bhusawal,
Dist. Jalgaon
 2. Pandit Trimbak Mohite,
Age: Major, Occu: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon
 3. Kanhu Mohan Gunmal,
Age: Major, Occu: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon.
 4. Draupatibai Pitamber Patil,
Age: Major, Occ: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon.
- Nos. 2 to 4 deleted as per

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Hon'ble Court's ordering
dated 06/05/2016

..RESPONDENTS

WITH

WRIT PETITION NO.8771 OF 2016

Pradeep Pitambar Patil,
Age: 53 years, Occu: Business,
R/o. Sharda Nagar,
Tal. Bhusawal, Dist. Jalgaon

..PETITIONER

VERSUS

1. Sitaram Gulabchand Agrawal,
Age: 68 years, Occu: Business,
R/o. Sarafbazar, Tal. Bhusawal,
Dist. Jalgaon
2. Pandit Trimbak Mohite,
Age: Major, Occu: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon
3. Kanhu Mohan Gunmal,
Age: Major, Occu: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon.
4. Draupatibai Pitamber Patil,
Age: Major, Occ: Business,
R/o. Athavade Bazar,
Tal. Bhusawal,
Dist. Jalgaon.
5. Dr. Vijay Pitamber Patil,
Age: 60 years, Occ: Medical
Practitioner, R/o. Sharda Nagar,
Tal. Bhusawal, Dist. Jalgaon.
6. Sanjay Vasant Jangale,

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Age: Major, Occ: Business,

7. Shripad Uttam Jangale,
Age: Major, Occ: Business,
8. Suryakant Vasant Jangale,
Age: Major, Occ: Business,
9. Jagdish Sudhakar Jangale,
Age: Major, Occ: Business

All respondent Nos. 6 to 9
R/o. Shanti Nagar, Yawal Road,
Bhusawal, Dist. Jalgaon. ..RESPONDENTS

Mr P.B. Gapat, Advocate for petitioners;
Mr S.S. Bora, Advocate for respondent No.1

CORAM : NITIN W. SAMBRE, J.

DATE : 8th SEPTEMBER, 2017

ORAL ORDER :

The petitioner is defendant in Regular Civil Suit No. 29 of 1978, which was moved by original plaintiff-respondent for removal of encroachment. It appears that, learned District Judge remanded the matter after suit was finally decided by ordering appointment of Court Commissioner.

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2. In intervening period, vide sale deed executed on 30th January, 1997 the plaintiff has transferred the entire property including that of encroached area but for the construction on the said property in favour of third person which was sought to be impleaded as party-defendant to the suit vide application at Exhibit-142. The said application for amendment came to be allowed vide order dated 7th November, 2015 passed by 2nd Joint Civil Judge, Junior Division, Bhusawal.

3. The petitioner-defendant took out two applications; one – Exhibit-132 which is for dismissal of suit on the ground that the sale deed dated 12th January, 1997 was not disclosed by the plaintiff and another – Exhibit-152 for consequential amendment including that of again prayer for dismissal of the suit on the ground of transfer of the property.

4. Learned Counsel for the petitioner submits that once the plaintiff having transferred entire

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floor area, the impleadment of the purchaser as defendant to the suit will be of hardly any consequence, particularly when there is no relief as such claimed by the plaintiff in the suit against him. According to him, without considering the said aspect of the matter, in mechanical manner, the application at Exhibit-142 came to be allowed.

5. Per contra, Mr. Bora, learned Counsel for the plaintiff would urge that in view of transfer of the entire ground area, there is likelihood that right of purchaser will be affected, as such, trial Court rightly granted prayer for amendment.

6. Considered rival submissions. In my opinion, learned trial Court has committed an error in granting application at Exhibit-142, particularly in view of the fact that plaintiff, while impleading the said purchaser as party-defendant, has not claimed any relief against the said purchaser. Right or any cause to the said

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purchaser will be independent of the claim made by the plaintiff in the suit in question.

7. In view thereof, in my opinion, the order granting amendment by allowing application at Exhibit-142 vide order dated 7th November, 2015 is liable to be quashed and set aside and is accordingly ordered. The application at Exhibit-142 seeking amendment is rejected.

8. As a consequence of rejection of application for amendment at Exhibit-142, applications at Exhibit-132 and Exhibit-152 filed by the petitioner also no more survive and accordingly disposed of as infructuous.

9. With above observations, petitions stand disposed of.

(NITIN W. SAMBRE, J.)