

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

925 LETTER PATENT APPEAL NO. 51 OF 2013
WITH CA/4258/2013 IN LPA/51/2013

ZAHIDA ABU ASIM AZMI AND ANOTHER
VERSUS
MANGILAL BALCHAND KATARIA AND OTHERS

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Advocate for Appellants : Mr. S.M. Mantri h/f. Dodya S.G.
Advocate for Respondents : Mr. P.F. Patni for R/1 to 3.

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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 14.07.2017.

P.C. :-

. This Letters Patent Appeal challenges the order of the learned Single Judge dated 22.02.2013 in writ petition no. 3543/2012.

2. We have heard both sides.

3. The present appellants are the original petitioners in the writ petition, they have filed a special civil suit No. 294/2009 seeking specific performance of an agreement/contract for sale dated 17.07.2006 in respect of land bearing gut nos. 280 and 283 situated at Village Harsul, Taluka and District Aurangabad. That suit is pending.

4. A special civil suit no. 370/2009 has been filed by the

respondent nos. 1 to 3 and they rely upon an agreement for transfer/sale of the very land and with the very vendor.

5. An order below exhibit-23 in special civil suit no. 370/2009 was challenged not by any party to that suit but by the present appellants who are plaintiff in special civil suit no. 294/2009.

6. The Third Joint Civil Judge Senior Division, Aurangabad passed an order on 17.03.2011. That order *inter alia* directs that both the suits are consolidated/clubbed, they will proceed on one and the same date. Hence, the learned Judge found that the controversy as to whether the present petitioners are necessary parties to special civil suit no. 370/2009 is rendered academic.

7. It is this conclusion which is assailed in the Letters Patent Appeal.

8. After hearing both sides, we gave a suggestion to Mr. Mantri, appearing for the appellants/original writ petitioners and the Advocate appearing for respondent nos. 1 to 3-original plaintiffs in the other suit. That suggestion was that the recording of evidence shall commence first in the suit of the present appellants namely special civil suit no. 294/2009, it is after conclusion of recording of evidence that the suits

will then proceed in terms of the order and direction of the learned trial Judge dated 17.03.2011.

9. All contentions as far as merits of the claim and the eventual relief to both sides in both suits are kept open. The Letters Patent Appeal is disposed of in the light of these suggestion which is accepted by both sides. Civil application, if any, also stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]