

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 10798 OF 2017**

Vinod Madhukar Mundada,  
Age 53 years, Occupation C.A.,  
R/o C.T.S. No.1606/A,  
Lane No.6, Taluka and District  
Dhule.

.. Petitioner

VS.

- 1) Ramesh Sahadu Patil,  
Age 57 years, Occupation Labour,  
R/o Fagane Tal. Dist. Dhule.
- 2) Yamunabai Mahadu Patil,  
Age 75 years, Occupation Household,  
R/o Fagane Tal. Dist. Dhule.
- 3) Arjun @ Dagadu Gangaram Patil,  
Age 58 years, Occupation Agri.,  
R/o Fagane Tal. Dist. Dhule.
- 4) Manoj Vinayak Thakur,  
Age 48 years, Occupation Business,  
R/o Plot No.44, Telephone Colony,  
Deopur, Dhule.
- 5) Hemant Vishwasrao Patil,  
Age 44 years, Occupation Business,  
R/o Shivratna Apartment,  
27, Professor Colony,  
Deopur, Dhule.
- 6) Arastolbai Dadaji Patil,  
Since deceased through **L. Rs.**

- 6A) Dadaji Daga Patil,  
Age 53 years, Occupation Agri.,  
R/o Kirwade Tal. Sakri  
District Dhule.
- 6B) Hiralal Dadaji Patil,  
Age 53 years, Occupation Nil,  
R/o as above.
- 6C) Pandit Dadaji Patil,  
Age 25 years, Occupation ...,  
R/o as above.
- 6D) Soni Dadaji Patil,  
Age 29 years, Occupation ...,  
R/o as above.
- 7) Ushabai Muralidhar Patil,  
Age Major, Occupation Household,  
R/o Navalnagar,  
Tal. and Dist. Dhule.
- 8) Chotibai @ Sangita Kailas Patil,  
Age Major, Occupation Household,  
R/o Fagane, Tal. Dist. Dhule.
- 9) Sarlabai @ Sneha Ashok Patil,  
Age Major, Occupation Household,  
R/o as above. .. Respondents

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Mr. S. P. Shah, Advocate for the petitioner.

Mr. M. S. Kulkarni, Advocate for respondent No.1.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE OF RESERVING**

**THE JUDGMENT : 29-11-2017.**

**DATE OF PRONOUNCING**

**THE JUDGMENT : 20-12-2017.**

**ORAL JUDGMENT ( Per Smt. Vibha Kankanwadi. J.)**

1. Heard both sides at the stage of admission, with consent.
2. Present petitioner is the respondent No.1-original plaintiff who is challenging the order dated 01-04-2017 passed by District Judge- 3, Dhule, below exhibit 5 in Regular Civil Appeal No.136 of 2016 by invoking Article 226 and 227 of the Constitution of India.
3. The factual matrix leading to the writ petition are that, the present petitioner- original plaintiff filed Special Civil Suit No.170 of 2007 for declaration that, the decree passed in Special Civil Suit No. 06 of 2003 dated 12-01-2006 in respect of Gut No.401/1/A, area admeasuring 1-H 23-R situated at Fagane Tal. and Sit. Dhule is not binding on him and the suit property. The said suit came to be decreed on 06-10-2016 by Joint Civil Judge, Senior Division, Dhule. It will not be out of place to consider the other facts. Defendant No.1 in the said Special Civil Suit No.170 of 2007 had filed Special Civil Suit No. 06 of 2003 for partition and separate possession against the other defendants which came to be decreed on 12-01-2006. In the said suit for partition and possession, the plaintiff i.e. present respondent No.1

had contended that, defendant No.1 therein who is his father, defendant No.2 mother and he himself had share. It was contended that, the sisters defendant No.6 to 9 have no share. One of the property was sold to defendants No.4 and 5 by defendant No.1 without taking consent of the plaintiff. While decreeing that suit, the transaction between defendant No.1 and defendant No.3 as well as defendant No.1 and defendants No.4 and 5 was held to be null and void and not binding upon the plaintiff. However, as aforesaid, the plaintiff in Special Civil Suit No.170 of 2007 i.e. present petitioner who had purchased the property from the defendants No.4 and 5 in Special Civil Suit No.06 of 2003 contended that, the said decree is not binding on him. The said suit came to be decreed in his favour. Now the original defendant No.1 filed Regular Civil Appeal No.136 of 2016 challenging the said decree in Special Suit No.170 of 2007 and filed an application for stay. After hearing both sides, the said application has been allowed on 01-04-2017.

4. It has been argued on behalf of the petitioner that, the consequence of the stay to the Judgment and decree passed in Special Civil Suit No.170 of 2007 would revive the effect of decree that has been passed in Special Civil Suit No. 06 of 2003. The said decree

would be put to execution thereby rendering the suit of the petitioner infructuous. The learned District Judge has not given proper reasons while granting stay and he had not foreseen the effect of the stay. It has been stated that, in order to avoid the multiplicity of the proceedings, the stay is required to be granted but in fact because of the stay it would multiply the litigation.

5. Per contra, it has been stated by respondent No.1 that, during the pendency of Special Civil Suit No. 06 of 2003, the present petitioner had purchased the property from defendants No.4 and 5 on 05-05-2005, and therefore, the said transaction was hit by the principles of *lis pendens*. In fact this fact of transaction hit by *lis pendens* was not considered while decreeing the suit filed by the petitioner i.e. Special Civil Suit No.170 of 2007. Further immediately after the suit was filed, the petitioner himself had sold the entire property to one Sanjay Chandan Patel on 19-12-2007. Said Sanjay Patel had instituted Regular Civil Suit No.274 of 2011 for a declaration that the mutation entry No.3619 is illegal and invalid. However, the said suit came to be withdrawn unconditionally by him on 14-12-2016. Prior to that on 06-10-2016 the suit instituted by the present petitioner was decreed. That means, as on today the petitioner has no

interest in the suit property. Various admissions were given by the present petitioner from whom the petitioner has derived title which would go to show that, they had not taken proper precautions before purchasing the property. Therefore, the stay granted by the learned District Judge is proper and in the interest of the parties to maintain the status-quo in respect of the suit properties.

6. The facts those have been disclosed are that the present respondent No.1 had filed Special Civil Suit No. 06 of 2003 for partition and separate possession. It came to be decreed on 12-01-2006. It was against his father, mother, sisters and the purchasers. While decreeing the suit it has also been declared that, the transaction between the defendants No.1, 4 and 5 therein dated 13-11-2002 is null and void, and not binding on the plaintiff. Further the transaction between defendants No.1 and 3 therein was also declared as, null and void, and not binding on the plaintiff. It was declared that, the plaintiff is having  $1/3^{\text{rd}}$  share in the suit properties. Thereafter, one Vinod Madhukar Mundada i.e. present petitioner filed Special Civil Suit No.170 of 2007 against all the parties who were parties to Special Civil Suit No. 06 of 2003 for a declaration that the decree obtained in the said suit is not binding on him. He claimed to be the purchaser

from defendants No.4 and 5 from Special Civil Suit No.06 of 2003. Now this suit has also been decreed on 06-10-2016. The said decree is under challenge in Civil Appeal No. 136 of 2016 and the learned District Judge – 3, Dhule has stayed the Judgment and decree passed in Special Civil Suit No.170 of 2007. The important point involved in the case is, whether the transaction between present petitioner and the defendants No.4 and 5 in Special Civil Suit No.06 of 2003 was hit by doctrine of *lis pendens*. Further by way of affidavit-in-reply to this petition, it has been brought on record that, even the said plaintiff i.e. present petitioner has sold the said suit property to one Sanjay Chandan Patel. Said Sanjay Chandan Patel had instituted Regular Civil Suit No.274 of 2011, but thereafter it appears that, he has withdrawn the suit. That means, it is required to be seen as to whether the present petitioner has any interest left in the suit property.

7. No doubt there is some substance in the say canvassed by the petitioner that, the stay to the Judgment and decree passed in Special Civil Suit No.170 of 2007 would revive the decree passed in Special Civil Suit No. 06 of 2003, however on the basis of which the said Special Civil Suit No.170 of 2007 was filed seems to have been frustrated when the petitioner has sold the suit property to a third

person. The parties are creating third party interest in the suit properties to which the original plaintiff in Special Civil Suit No.06 of 2003 is stated to be having share in the property. This cannot be left in abeyance, and therefore, while granting stay a balance will have to be struck. The litigants should come before the Court with clean hands. When the interest and right in the property has been sold out by the petitioner, he cannot now agitate that the said stay granted in the appeal would prejudice him. A reasoned order has been passed by the learned District Judge, Dhule and a balance is tried to be struck which need not be interfered in the extraordinary writ jurisdiction of this Court. I do not find any substance in the writ petition, it deserves to be dismissed. Hence, the writ petition is dismissed with no order as to costs.

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**

vjg/-.