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

WRIT PETITION NO.11442 OF 2010

Hindavi D/o Shrimantrao Gorde Patil,
Age: 22 years, Occ: Service,
R/o. Devanagari, Aurangabad,
Tal. & Dist. Aurangabad. ..PETITIONER

VERSUS

1. Vedant Alias Rajesh s/o
Suresh Dube, Age: 5 years
minor, Under Guardianship of
Natural Mother Smt Shailaja
Wd/o Suresh Dube, Age: 30 years,
R/o. House No.281, Durgamata
Square, Lane No.3, New Hanumannagar
Aurangabad.
2. Smt. Sbudhrabai Wd/o Madanprasad
Dubey, Age: 69 years, Occ: Household,
R/o. Nakshatrawadi,
Tq. & Dist. Aurangabad.
3. Meerabai Wd/o Rajendra Deubey,
Age: 47, Occ: Nil,
R/o. Nakshatrawadi,
Tq. & Dist. Aurangabad.
5. Ramesh s/o Madanprasad Dubey,
Age: 47 years, Occ: Service,
Occ: Nil, R/o. Nakshatrawadi,
Tq. & Dist. Aurangabad. ..RESPONDENTS

Mr V.C. Patil, Advocate h/f Mr S.M. Godsay,
Advocate for petitioner;

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CORAM : NITIN W. SAMBRE, J.**DATE : 4th SEPTEMBER, 2017****ORAL ORDER :**

Heard Mr. Patil, learned Counsel for the petitioner. The respondents though served, none appears, in spite of second notice ordered by this Court.

2. The writ petition is pending admission since 2010, in which, suit proceedings are stayed by this Court, as such, this Court is left with no other option but to proceed with the hearing of this petition.

3. Special Civil Suit No. 403 of 2008 initiated for partition and separate possession was partly decreed by the judgment delivered by Civil Judge, Senior Division, Aurangabad, in which, the property which was subject matter was also subject matter of Special Civil Suit No.426 of 2009 initiated by the petitioner for specific performance of the contract based on agreement of

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sale dated 25th February, 2008. Against the decree passed in Special Civil Suit No. 403 of 2008, Regular Civil Appeal No. 148 of 2009 was preferred by aggrieved party before learned District Judge, Aurangabad, which I am informed is pending adjudication. In the said appeal, present petitioner moved application below Exhibit-14 seeking impleadment as party respondent to the said appeal being a person interested in the suit property, which came to be rejected by the impugned order dated 28th September, 2010 passed by learned District Judge-9, Aurangabad. As such, this petition.

4. Heard learned Counsel for the petitioner at length. None appears for the respondents though served.

5. It could be gathered from the record that pendency of Special Civil Suit No. 426 of 2009 based on agreement of sale dated 25th February, 2008 between petitioner and respondent No.1 herein

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is not disputed.

6. Once the said fact is not disputed and Special Civil Suit No. 426 of 2009 for specific performance of contract is pending at the behest of present petitioner, in my opinion, rejection of the application moved by the petitioner for impleading as third party in Regular Civil Appeal No. 148 of 2009 has to be termed as erroneous, particularly in the light of law laid down by the Apex Court in the matter of ***Dhanalakshmi and others vs P. Mohan and others*** reported in ***A.I.R. 2007 SC 1062***. The Apex Court, in the said judgment, has laid down law that in case, sale of undivided share of the suit property by co-sharer during pendency of the suit is noticed, such purchaser of the share from co-sharer pursuant to the principle of equity was held to be entitled for share of said co-owner. Keeping in view the above principle, in my opinion, the Court below has committed an error in rejecting the application below Exhibit-14 moved by the present petitioner.

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7. In view of the fact that appeal being Regular Civil Appeal No.148 of 2009 is informed to be still pending, Special Civil Suit No. 426 of 2009 for specific performance of the contract initiated by the petitioner is not yet decided and the fact that the above referred statements are not controverted by the respondents herein, it will be appropriate, in my opinion to set aside the impugned order dated 28th September, 2010 passed below Exhibit-14 in Regular Civil Appeal No. 148 of 2009 by learned District Judge-9, Aurangabad.

8. For the reasons recorded, in my opinion, prayer made in the application below Exhibit-14 needs to be allowed to the extent of directing that the present petitioner be impleaded as party defendant in Special Civil Suit No. 403 of 2008.

9. Appropriate amendment be carried out within a period of four weeks from the date of receipt of this order, failing which, the order

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shall stand revoked without further reference to the Court.

10. With aforesaid observations, writ petition stands disposed of.

(**NITIN W. SAMBRE, J.**)

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