

(1)

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

WRIT PETITION NO.12337 OF 2016

City Corporation Ltd.
Through its Managing Director,
Anirudhha Pradumna Deshpande,
Regd Off. At 317/19A,
City chambers, F.C. Road,
Pune

..PETITIONER

VERSUS

1. Mr Chandrakant Parashnath Sasane
Age : 64 years Occu : Agriculture,
R/o. Bhojade (Lonkarwasti)
Tq.Kopargaon. & Dist.Ahmednagar,
(Ori.Plaintiff)
2. Mr Kunal Bhanudas Sasane,
Age : 20 Years, Occu : Education
3. Mr Mrunal Bhanudas Sasane,
Age : 20 Years, Occu : Education
4. Mr Devidas @ Bhanudas Parashram Sasane,
Age : 53 Years, Occu : Contractor
Rspnt.no.2 to 3 R/o Plot No.276/8,
Beside Samarth School, Bhistbag road,
Sawedi, Ahmednagar
5. Smt Madhuri Tukaram Sasane,
Age : 54 Years, Occu : Agriculture
6. Mr Sachin Tukaram Sasane,
Age : 30 Years, Occu : Service
7. Mrs Shilpa Mahesh Gaikwad
Age : 23 Years, Occu : Service

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8. Mrs Swapna Dipak Phule,
Age : 21 Years, Occu : Service.
Respondent No. 5 to 8.
R/o : Bhojade (Lonkarwasti)
Taluka Kopargaon, Dist. Ahmednagar
9. Smt Shailja Sitaram Sasane,
Age : 47 Years, Occu : Household
10. Mrs Anagha Ravindra Raut,
Age : 25 Years, Occu : Household
11. Ku Ruchira Sitaram Sasane,
Age : 22 Years, Occu : Education
Respondent No. 9 to 11
R/o Shakuntala Apartment,
Professor colony Sawedi,
Ahmednagar
12. Smt Prabhawati Shankarrao Bankar,
Age : 58 Years, Occu : Household
R/o Sangavibhusar (Bankarvasti),
Tq.Kopargaon, Dist.Ahmednagar
13. Mr Pandurang Parashram Sasane,
Age : 80 Years, Occu : Agriculturist
14. Mr Balwantrao Parashram Sasane,
Age : 67 Years, Occu : Agriculturist
15. Mr.Digambar Parashram Sasane,
Age : 65 Years, Occu : Agriculturist,
(Respondent No.15 R/o: C/o: Radhika
Santosh Kute, Khule Vasti,
Akaluji Road, Tembhorni,Tq.Madha,
Dist. Solapur),Respondent Nos. 13 to 14
are residing at Village Bhojade
Taluka Kopargaon,District Ahmednagar

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16. Mr Dattatray Parashram Sasane,
Age : 58 Years, Occu : Agriculturist
Residing at Savtsar Taluka Kopargaon,
District Ahmednagar
17. Mr Ashok Alias Kashinath Parashram Sasane,
Age : 55 Years, Occu : Agriculturist,
Residing at Omkar colony, Galli No.4
Shree Ji Vandana Apartment Flat No.401
Near Ramkrushna Mangal Karyalay,
Pimpale Gurav, Pune
18. Mrs Anusaya Vasantrao Kodre,
Age : 70 Years, Occu : Housewife
Residing at Shewalewadi, Hadapsar,
Tq.Haveli, Dist. Pune.
19. Smt Kamal Madhukar Borawake,
Age : 66 Years, Occu : Housewife
R/o Yewala Road, Borawake Vasti,
Kopargaon, Dist : Ahmednagar.
20. Mrs Vimal Narayan Bankar,
Age : 64 Years, Occu : Housewife
R/o Pandhare, Tq : Baramati, Dist.Pune.
21. Mrs Aruna Satishrao Jagtap
Age : 64 Years, Occu : Housewife
R/o Jagtap Bhavan, Sangmeshwar,
Malegaon, Dist. Pune.
22. Mrs Rajani Shivaji Aher,
Age : 58 Years, Occu : Housewife
R/o Andarsul, Tq.Yewala, Dist.Nashik
23. Mr.Suresh Bhimrao Sasane,
Age : 60 Years, Occu : Housewife
24. Bhaskar Bhimrao Sasane (Died Through Lrs.),

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- 24(A) Smt Savita Bhaskar Sasane,
Age : 48 Years, Occu : Housewife
- 24(B) Harshad Bhaskar Sasane,
Age : 22 Years, Occu : Education
- 24(C) Bhagyashree Anand Jagtap
Age : 24 Years, Occu : Housewife
Respondent No.23, 24(A), 24(B),
24(C) all R/o : Bhojade
A/P:Lonkar Vasti,
Tq:Kopargaon, Dist:Ahmednagar.
25. Mrs Kantabai Eknath Khetmalas,
Age : 64 yrs, Occu : Housewife,
R/o : Mirajgaon, Tq. Karjat,
Dist.Ahmednagar
26. Smt Alka Ramesh Sasane
Age : 45 Occu : Housewife
Residing at Passaydaan
Apartment,Shankar Nagar,
Near Sapkal Hospial, Savedi,
Ahmednagar
27. Mr Kiran Arjunrao Sasaane
Age : 40 Occu : Agriculturist
- 28 Mr Uddhav Arjunrao Sasane
Age : 40 Occu : Agriculturist
Respondent No. 29 and 28
residing at Satvsar,
Laxmanwadi, Taluka Kopargaon,
District Ahmednagar
- 29 Mrs Bharati Pramod Kodre
Age : 38 Occu : Housewife
Residing at Dasharathwadi,
Savatsar, Taluka Kopargaon,
District : Ahmednagar

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30 Mrs Jayshree Dnyandeo Borawake
Age : 36 Occu : Housewife
Residing at Dharangaon Road,
Borawake Wasti, Kopargaon

31 Smt Sidhumati Arjunrao Sasane
Age : 75 Occu : Housewife
Residing at Laxmanwadi, Sanvatsar,
Taluka Kopargaon,
District Ahmednagar

..RESPONDENTS

Mr P.N. Kutti, Advocate holding for Mrs Chaitali R. Kutti-Choudhary,
Advocate for petitioner;
Mr D.G. Nagode, Advocate for respondents no.2 & 4;
Ms Monali Patil, Advocate holding for Mr S.D. Kulkarni, Advocate for
respondent no.19

CORAM : NITIN W. SAMBRE, J.

DATE : 20th November, 2017

ORAL ORDER:

In a suit for partition, being Special Civil Suit No.119 of 2007,
defendant no.12-petitioner herein, purchased part of the suit property vide
registered sale deed dated 18th April, 2016, pursuant to the agreement of
sale dated 16th April, 2005.

2. Claiming that all the parties but for defendant no.30 have transferred
the property in favour of the petitioner, application Exh.179 came to be
moved in the aforesaid suit with a prayer for deletion of the property from
the suit which was purchased by the petitioner, so also deletion of
petitioner as defendant no.12 to the suit.

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3. Application Exh.179 came to be rejected vide impugned order dated 5th October, 2016, passed by Civil Judge Senior Division, Kopargaon. Thus, the present petition.

4. Mr Kutti, learned Counsel appearing on behalf of the petitioner would urge that all the parties but for defendant no.30 having executed sale deed in favour of the petitioner, the present petitioner remained to be a formal party to the suit. According to him, the rights of the parties are already stood vested in the petitioner and as such, prayer was made. He would then urge that none of the parties have objected to the prayer of the petitioner and as such, least that was expected of the Trial Court was to allow the application Exh.179. An alternate submission is made that the matter be remitted back for hearing afresh, after inviting the say of the objector defendants afresh.

5. The claim is opposed on the ground that the property which is purchased by the petitioner is part of the common hotchpotch in the suit for partition. The fact remains that defendant no.30 has not transferred her rights in favour of the petitioner. The original defendants no.2 to 4 have also objected orally on the ground that the suit is for declaration of will deed to be not binding and as such, defendant no.12 is a necessary party, particularly having purchased the property during the pendency of the suit.

6. Considered rival submissions.

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7. The status of defendants as co-plaintiffs in a suit for partition is required to be appreciated in the backdrop of the order impugned in the petition. In view thereof, having regard to the admitted position on record that defendant no.30 has not transferred her rights in the suit property in favour of the petitioner-defendant no.12, has rightly prompted the Trial Court to reject the claim of the petitioner. Just because majority of the share holders have transferred their shares in favour of the petitioner, that does not mean that all the defendants should be compelled to or in future will transfer share in favour of the petitioner and as such, the petitioner should be permitted to be deleted from the suit along with property that he has purchased.

8. The only observation which in my opinion is warranted in the circumstances of the case is, the Trial Court will consider the effect of purchase of property by the plaintiff from all defendants but for defendant no.30, at the time of final hearing of the suit.

9. With above observation, I hardly notice any substance in the petition which warrants interference. Writ Petition thus fails and stands dismissed.

10. In the circumstances, it is prayed by Mr Kutti, learned Counsel appearing on behalf of the petitioner that the stay ordered by this Court to further proceedings be extended by four weeks, to which the learned Counsel appearing on behalf of respondents no.2 to 4 and 19 are not objecting. In view of above, the order staying the suit shall remain in

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operation for a period of four weeks from today and thereafter it would cease to operate automatically.

(NITIN W. SAMBRE, J.)

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