

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7042 OF 2014

Sangita Ajit Patil & Anr.

.. Petitioners

Vs.

Sou. Kamal Ramgonda Patil & Ors.

.. Respondents

Mr. Amit B. Borkar for the Petitioners.

Mr. Nitin B. Patil for Respondent No.1.

CORAM : SMT. SADHANA. S. JADHAV, J.

DATE : 15th NOVEMBER, 2017.

P. C. :

1. Heard.
2. Rule. Rule made returnable forthwith by consent of the parties.
3. The petitioners herein happen to be the original plaintiffs in Special Civil Suit No. 17 of 2012 pending before the Civil Judge, Senior Division at Ichalkaranji. The suit was filed for specific performance and a further prayer that during the pendency of the suit, the defendant shall not create any third party interest. The suit is instituted on 13.12.2013. It appears that the suit property was gifted by the defendant in favour of his daughter on 28.02.2014. Admittedly, the said gift deed was executed during the pendency of the suit. In view of the same, the plaintiffs had filed an application below Exhibit 17 seeking impleadment of Sou. Nirupama Mallappa Belgudri who happens to be a daughter of the defendant. The

learned Court has placed reliance upon a Judgment of Hon'ble Apex Court in the case of **Kasturi Vs. Iyyamperumal & Ors.** reported in **AIR 2005 SC 2813.**

4. The said application was rejected by an order dated 15.05.2014. Hence, this petition.

5. Further proceedings were stayed by an order dated 10.09.2015 by this Court as on today. The learned counsel for the petitioners has placed implicit reliance upon a Judgment of the Hon'ble Apex Court in the case of **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397** wherein the Hon'ble Apex Court had considered the question as to whether if the appellant, who is transferee pendente lite, having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order I, Rule 10 on the basis of sale deeds executed in their favour by the defendants and it was held by the Hon'ble Apex Court that the transfer in favour of the Appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein. That, since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as party defendant to the suit. Placing reliance upon the Judgment (cited supra), this Court in the case of **Prakash Dattatraya Patil Vs. Ismail Abdul Jamdar & Ors. in Writ**

Petition No. 5844 of 2016 has held that the subsequent purchaser would be necessary party as he would be affected if he had purchased the suit property with or without notice of the contract.

6. The learned counsel for the respondents vehemently submitted that the suit was instituted in December, 2013, the defendants had no knowledge of the institution of the suit and therefore has gifted the property in favour of his married daughter and therefore it cannot be said that it was with a malafide intention. In any case considering the facts and issue, this Court is of the opinion that it would be necessary to implead the beneficiary of the property as necessary party to the suit. With these observations, the order dated 15.05.2014 is hereby quashed and set aside. The learned Court shall implead Sou. Nirupama Mallappa Belgudri and shall permit her to file written statement and adduce evidence, if any.

7. The petition is allowed. Rule is made absolute in the above terms.

8. The petition stands disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]