

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

**945 CIVIL APPLICATION NO. 5928 OF 2012
IN SA/206/2000**

**TOTARAM DAGADU PATIL, DIED THR. L.RS. DWARKABAI AND
ORS
VERSUS
HARI DAGADU PATIL, DIED THR. L.RS. GEETABAI AND ORS**

....

Advocate for Applicants : Mr. Vikramsingh T. Chaudhary
Advocate for Respondent No. 1(i) to 1(vii) : Mr. M. M.Jadhav
h/f Mr. S.P. Shah.
Advocate for Respondent No.8 : Mr. T.R. Dawaze h/f Mr. A.G. Talhar

....

CORAM : V.L. ACHLIYA, J.

DATED : 12th OCTOBER, 2018

PER COURT:-

1. The applicants-appellants have filed this application to join respondent nos. 4,6, 7 and 8 as a party respondents to the appeal for the reasons set out in detail in the application and more particularly based upon the subsequent events, i.e. sale of the suit property to said respondents during the pendency of appeal.

2. Learned counsel for the applicants-appellants submits that in order to make a complete adjudication and to settle all questions involved in appeal, it is desirable to join respondent nos. 4, 6, 7 and 8 as the party respondents to appeal. Learned

counsel submits that during the pendency of appeal, the suit property has been sold to the said respondents in application by respondents-original defendants. Since the sale of the property is during the pendency, the respondent nos. 4, 6 7 and 8 are bound to abide the decision in the appeal. It is submitted that in order to avoid multiplicity of the proceedings, it is necessary to join the said respondents as a party respondents to appeal. In order to support the submission advanced, the learned counsel has referred the decision in the case of ***Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya*** reported in ***(2017) 9 SCC 700***. In para 17, the Apex Court has observed as under:-

"17. The expression "to settle all questions involve" used in Order 1 Rule 10(2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject-matter thereof. Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject-matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and

whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to added. If such purchase has expired, his legal representatives are necessary parties.”

2. Learned counsel for the respondents-original defendants opposed the application with the contention that the appeal is ready for hearing. He submits that there are concurrent decisions rendered by the courts below as against the applicants-appellants and in favour of the respondents-original defendants. He submits that no interim order was operating during the pendency of appeal. He further submits that the presence of respondent nos. 4, 6, 7 and 8 is not required for adjudication of appeal and they are not necessary parties to appeal.

3. Respondent nos. 4, 6 and 7 though served are absent. Learned counsel for the respondent no.8 urged to decide the application with appeal.

4. Considering the submissions advanced in the light of the over all facts of the case, I am of the view that the application deserves to be allowed so as to settle all questions involved in the appeal. There is no dispute that during the pendency of the appeal, the suit property has been sold to respondent nos. 4, 6 to 8 and they are subsequent purchase of the suit property. In that view, the joining of the said respondents as a party respondents

no serious prejudice would be caused to them as well as respondents-original defendants. On the contrary, it would help to adjudicate the matter finally and further avoid the multiplicity of the proceedings. In that view, I am inclined to allow the application. Accordingly, the application is allowed. Respondent nos.4, 6 to 8 be added as a party respondents to appeal. Necessary amendment/substitution be carried out within two weeks from the date of order.

5. The civil application is disposed of in above terms.

6. On making respondent nos. 4, 6 to 8 as a party respondents, notices be issued to them, returnable on 10.12.2018. Mr. Talhar, learned counsel waives service of notice for respondent no.8 in appeal.

7. In addition to service through process of court, the applicants-appellants are directed to serve the respondents by Registered Post and file affidavit of service on the next date. Hamdast is permitted.

8. List the appeal for hearing on 10.12.2018.

(V.L. ACHLIYA)
JUDGE