

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 7446 OF 2016****Munaf Qadarbhai Memon****..... Petitioner****VERSUS****Mohd.Umar Aminuddin Ansari & Ors.****..... Respondents**

Mr.Manoj Harit, i/b. Mr.Manoj Harit & Company for the Petitioner.

Mr.N.R.Bubna for the Respondent no.1.

Ms.P.J.Gavhne, A.G.P. for the Respondent no.3.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 13th June, 2016 passed by the learned District Judge – 1, Malegaon below Ex.19 in Civil Appeal No.133 of 2015 by which the petitioner (original appellant) had prayed for amendment in the appeal and to implead the subsequent purchaser with a view to avoid multiplicity of the proceeding.

2. It is the case of the petitioner that on 27th April, 2016, the appeal court had granted interim stay in favour of the petitioner and against the respondent no.1. However, on 6th April, 2016, prior to the date of the said order, the respondent no.1 has alleged to have sold the property to one of his relative and thus the impleadment of the third party purchaser was necessary.

3. A perusal of the order dated 27th April, 2016 passed by the appeal court clearly indicates that the respondent no.1 did not disclose before the appeal court that on 6th April, 2016, the respondent no.1 had already created third party rights in respect of the property in question.

4. The learned District Judge – 1 has rejected the application for impleadment of the said third party on the ground that the transfer made by the respondent no.1, if any, pending the appeal would be taken care of by the section 52 of the Transfer of Property Act.

5. Since the respondent no.1 has sold the property in favour of the third party and the appeal filed by the petitioner against the impugned decree is already admitted, in my view, the learned trial judge ought to have allowed the said application for impleadment below Ex.19 on the ground that the impleadment of such party would be necessary for the purpose of disposal of the said appeal preferred by the petitioner effectively.

6. Impugned order dated 13th June, 2016 passed by the learned District Judge -1 is accordingly quashed and set aside.

7. Application (Ex.19) filed by the petitioner is allowed. Amendment to be carried out within two weeks from today. Amended copy of the Civil Appeal No. 133 of 2015 shall be served upon the respondents to the said appeal including newly added party within two weeks from the date of carrying out amendment.

8. Writ petition is allowed in the aforesaid terms. There shall be no order as to costs.
9. Hearing of the appeal is expedited.

[R.D. DHANUKA, J.]