

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

WRIT PETITION No. 13200 OF 2016

Major Bhola Nath Tiwari (Retd.) ...Petitioner

Versus

Mr.Rakesh Kumar & Anr. ...Respondents

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Mr.Avadhesh N. Misra for the Petitioner.
Mr.Jaydeep Deo for Respondent No.2.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 17, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
3. This Petition is directed against the order dated 28th July, 2016 passed by the learned Addl. Judge, Small Causes Court, Pune thereby allowing the application below exhibit 147 in Special Civil Suit No. 936 of 2010.

4. Respondent No.1, who is the original plaintiff, has filed a suit against the petitioner/ defendant, who is a builder/ developer, for perpetual injunction and declaration in respect of the suit flat. During the pendency of the said suit, the plaintiff has sold the suit flat to a third party. Thereafter, an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 moved by the third party for impleading him as a plaintiff No.2 in the said suit. Thus, the defendant has filed a counter claim in the said suit against the plaintiff.

5. The learned Counsel for the petitioner has submitted that during the pendency of the suit, the plaintiff has transferred the property to the third party so it is barred under Section 52 of the Transfer of Property Act, 1882, as it *lis pendens*.

6. The learned Counsel for respondent No.1 while opposing this Petition, supported the order passed by the learned Judge of the trial Court.

7. Heard submissions. Perused impugned order. Considering the transaction between the plaintiff and the third party, the right to sue accrues in favour of the third party. In order to avoid multiplicity of the proceedings, the third party is rightly allowed to be impleaded as a plaintiff No.2 especially when the plaintiff has no objection. No interference is required in the order dated 28th July, 2016 passed by the learned Addl. Judge, Small Causes Court, Pune. Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)