

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4893 OF 2018

Ashokkumar Pandurang Kaddam .. Petitioner  
Versus  
Bhalchandra Shankarrao Tayade & Ors. ..  
Respondents

Mr. Amey Deshpande i/b. J.D. Khairnar for petitioner

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 19<sup>th</sup> July 2018.

P.C.

This petition is filed in writ jurisdiction of this Court under Article 227 of the Constitution of India, thereby taking exception to the order dated 4<sup>th</sup> October 2017 passed by Joint Civil Judge, Senior Division, Nashik. The petitioner is a third party, who has moved application below Exh.67 in Special Civil Suit No.160 of 2013 for impleading him as party defendant in the suit. The respondent – original plaintiff has filed a suit for partition in ancestral property against the defendants. The plaintiff and some of the defendants have entered into an MOU/ agreement of sale with a third party. It is contended by the learned Counsel for the

petitioner that as the petitioner has purchased the undivided share in the suit property, he is necessary and proper party to the suit.

2]           Considered the submissions and the impugned order. Under Section 54 of the Transfer of Properties Act, no right is created by way of MOU or agreement of sale, unless the possession is handed over. I am informed that a separate suit is filed by the petitioner for specific performance of the said agreement where the plaintiff and the defendants are parties. Under such circumstances, as the petitioner has followed a proper legal recourse by filing a separate suit, his presence is not required for adjudicating the issue of partition before the trial court.

3]           No interference is, therefore, required in the impugned order. Petition is dismissed in limine.