

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

**WRIT PETITION NO.1690 OF 2014
WITH
CIVIL APPLICATION NO. 12036 OF 2018 IN
WP/1690/2014**

**HANUMANT NARHARI HUGE
VERSUS
SHAIKH HAMID SHAIKH JAFAR AND OTHERS**

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Advocate for the Petitioner : Smt. M. A. Kulkarni
Advocate for Respondent No. 6 : Shri V. V. Bhavthankar
Advocate for Respondent No. 7 : Shri G. R. Syed

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th MARCH, 2019.

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PER COURT :

1. The petitioner – original plaintiff is aggrieved by the order dated 12/12/2013 passed by the Trial Court thereby allowing application Exhibit 32 filed by the third parties, who are respondent Nos. 1 to 5 in Special Civil Suit No. 70/2011.
2. Despite service of court notice on the third parties, none have caused an appearance in this matter.
3. The suit preferred by the petitioner was for seeking

specific performance of contract and injunction. The basis of the suit was an agreement to sell dated 10/07/2007. A possession receipt was issued on 20/09/2008 after the land admeasuring 6 acres and 3 gunthas was handed over to the plaintiff. Since the registered sale deed was not executed by the defendants, that the petitioner preferred the suit for seeking specific performance of the contract.

4. The third parties moved an application Exhibit 32 on 24/01/2013. Contention was that they are connected with the said property. The Trial Court has recorded their contention that they belonged to the same family and their grand father Maheboob Saheb, father of Jafar Shaikh Mujafar, is the father of the third parties. The Trial Court has also recorded as to whether these third parties are concerned with the suit property or not, will be decided after the evidence is recorded.

5. In my view, in a matter involving the issue of specific performance of contract, unless the third party indicates some connection on the basis of some evidence, by which, the Trial Court would be convinced that the parties have some interests

in the suit property, an application for addition of parties could not be allowed. Even the Trial Court did not notice the exact nature of relation between the third parties and the suit property. Merely because a third party belongs to the same family, cannot be a ground for permitting the addition of party under Order I Rule 10 of the Code of Civil Procedure. The Trial Court necessarily has to come to the conclusion that if the third parties, are not added, it would be difficult in deciding the real contentious issues involved in the suit. Without any such conclusion, the Trial Court could not have allowed the application.

6. In view of the above, this petition is allowed. The impugned order dated 12/12/2013 is quashed and set aside and application Exhibit 32 stands rejected.

7. Pending Civil Application No. 12036/2018 does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-