

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

WRIT PETITION NO. 5260 OF 2019

**KUSHABA LAXMAN SHINDE AND OTHERS
VERSUS
NAMDEV NANAJI JAGTAP THROUGH LRS SUMANBAI LRS
SUNIL NAMDEV JAGTAP AND OTHERS**

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Advocate for the Petitioners : Shri R. R. Karpe

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th JULY, 2019.

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PER COURT :

1. On 03/07/2019, I had passed the following order :-

" 1. I have heard the learned Advocates for the petitioners for some time. There is no dispute that the petitioners are purchasers pendente lite. Defendant No.10, predecessor in title, is the vendor of the petitioners. The matter is before the Executing Court. Precept has already been sent to the District Collector. It is not the case of the petitioners that the share in favour of defendant No.10 has not been properly determined. In this backdrop, the District Judge-2, Ahmednagar has refused leave to appeal to the petitioners by the impugned order dated 12/03/2019.

2. *The learned Advocate for the petitioners seeks time*

to research as to whether there is any judicial pronouncement, which would indicate that a purchaser pendente lite can seek leave to file an appeal against the judgment and decree, which has already been put under execution and the execution is at the final stage.

3. *Stand over to 24/07/2019 for "passing orders".*
2. I have heard the learned Advocate for the petitioners.
3. It is settled law that a purchaser *pendente lite* could be treated as a person aggrieved by the decree of the Trial Court, provided the decree is not acquired by a compromise between the parties. In short, it should not be a collusive decree. In the event it is a collusive decree, then a third party can seek leave to appeal for challenging the judgment and decree of the Trial Court.
4. In the instant case, the suit was contested by all the parties and the petitioners concede that the suit is not allowed by a compromise decree so as to be termed as a collusive decree. In this backdrop, the rights that would accrue to a vendor resulting in granting a particular share to the vendor,

would be the limited right available to a purchaser *pendente lite*. He would therefore, derive his rights from his vendor.

5. The Trial Court has recorded in the impugned order and specifically at paragraph 81(4) as under :-

"4. In view of the sale-deed executed by the heirs of the defendant no.1 in favour of defendant no. 10 dated 4-5-2010, the sold portion of suit land be allotted the share of the heirs of original defendant no.1."

6. Considering the observations of the Trial Court reproduced above, the rights of the petitioners are taken care of by Clause 4 which is the direction issued by the Trial Court in the operative part of its order. If the petitioners have any grievance about the proper demarcation of the shares, those grievances can be taken care of through legally permissible means.

7. As such, this petition is disposed off with the above observations.

(RAVINDRA V. GHUGE, J.)

shp/-