

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**907 CIVIL APPLICATION NO.3295 OF 2020
IN CA/14306/2019**

MOHAN DATTATRAYA GAWADE
VERSUS
SUNIL HARIBHAU BENDBHAR

...
Advocate for Applicant : Mr. Bora Satyajit S.
Advocate for Respondent No.1 : Mr. N. C. Garud
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-07-2021.

ORDER :

1. At the outset, though the applicant says that the application is for intervention when it was specifically asked to learned Advocate for the applicant to point out under which provisions of law the intervention application can be allowed, then he appears to be relying on the provisions of Order 1 Rule 10 of the Code of Civil Procedure and, therefore, this Court is considering this application under Order 1 Rule 10 of the Code of Civil Procedure.
2. Heard learned Advocate Mr. S. S. Bora for applicant and learned Advocate Mr. N. C. Garud for respondent No.1.
3. In order to cut short, a fact is required to be specifically

mentioned that the present respondent No.2 had filed Regular Civil Suit No.23 of 2012 (Old Special Civil Suit No.13 of 2009) for claiming relief on preferential right to purchase the suit property. Original plaintiff and original defendant No.1 are the real brothers. It was the case of the original plaintiff that there was a partition between him and defendant No.1. Defendant No.1 had sold the suit land to original defendant No.2 on 03-10-2008. The defendants appeared in the suit, however, the matter proceeded without a written statement against them. The suit came to be dismissed. Original plaintiff filed appeal bearing Regular Civil Appeal No.400 of 2014. It was heard by learned Adhoc District Judge-3, Ahmednagar. It came to be decreed on 29-01-2019. However, the fact that has to be considered was that the suit was dismissed on 26-08-2014 and prior to that, that means during the pendency of the suit, original defendant No.1 had expired on 18-11-2012. The learned Adhoc District Judge held that the proceeding has abated against original defendant No.1, however, went on to decree the suit by allowing the appeal and now original defendant No.2 has filed the second appeal.

4. The present applicant who appears to be the son of original defendant No.1 has purchased the suit property from original

defendant No.2 on 11-11-2019 and, therefore, the present applicant prays that he be added as a respondent to the second appeal.

5. We may not go into other merits of the case, the only thing is that though the original plaintiff is objecting to the application, yet it is to be noted that he has filed an execution petition before the executing Court, but he accepts the fact that the original defendant No.2 /now the Judgment Debtor has sold the suit property to the present applicant. Under such circumstance, when parting with the possession of the suit property is a condition precedent for executing the sale deed and the fact of execution of the sale deed is accepted by the original plaintiff, it is in fact in the interest of the original plaintiff that the present applicant be brought on record. Whether the transaction between original defendant No.2 and the present applicant is hit by the doctrine of *lis pendens* or not would be definitely be considered in the second appeal, but for that purpose when the interest in the suit property has been parted out and the present applicant states that he has purchased that property, he has interest in the least before this Court and, therefore, in the interest of the justice also the application deserves to be allowed. Accordingly, the application stands allowed. Applicant be added as

respondent in the civil application as well as second appeal.

6. Necessary amendment be carried out by original defendant No.2 Sunil Haribhau Bendbhar within a period of two (2) weeks.

7. Place the other applications for further consideration on 22-07-2021.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-