

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

**CIVIL APPLICATION NO.2541 OF 2021
IN SA/215/1996**

PRITHVIRAJ CHANDRAKANT SHINDE AND OTHERS

VERSUS

**SUYOG CO-OPERATIVE HOUSING SOCIETY LTD., DEOPUR, DHULE AND
OTHERS**

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Mr. M.K. Deshpande, Advocate for applicants

Mr. S.P. Shah, Advocate for the respondent No.1

Mr. R.B. Raghuwanshi, Advocate for respondent Nos.2A to 2D

Mr. M.S. Kulkarni, Advocate for the respondent Nos.3A to 3D

Mr. N.L. Choudhari, Advocate for applicants (in CA/1346/2005)

Mr. M.K. Bhosale, Advocate for applicants (in CA/6050/2021)

Mr. Girish Nagori, Advocate for applicants (in CA/6737/2013)

Mr. A.B. Girase, Advocate h/f Mr. Y.B. Bolkar, Advocate for the applicant (in
CA/10179/2019)

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WITH

CIVIL APPLICATION NO.1346 OF 2005 IN SA/215/1996

WITH

CIVIL APPLICATION NO.6050 OF 2021 IN SA/215/1996

WITH

CIVIL APPLICATION NO.6737 OF 2013 IN SA/215/1996

WITH

CIVIL APPLICATION NO.10179 OF 2019 IN SA/215/1996

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CORAM : SMT. VIBHA KANKANWADI, J.**RESERVED ON : 22nd JULY, 2021****PRONOUNCED ON : 11th OCTOBER, 2021****ORDER :**

1 All these applications are filed to join the applicants as party i.e. respondent to the Second Appeal. The non applicant Suyog Co-operative Housing Society Limited, Deopur, Dhule is the original appellant in Second Appeal No.215 of 1996. The said appeal came to be admitted by this Court by order dated 10.02.1994 by framing substantial questions of law. Thereafter, for one or the other reason the appeal is pending for final hearing, though it appears from the record that twice or thrice the matter was listed for final hearing.

2 Applicants in Civil Application No.1346 of 2005 are contending that they are the members of the appellant society and purchased two plots on 21.03.1985 registered on 02.09.1985 by two separate sale deeds.

3 The applicants in Civil Application No.2541 of 2021 submit that the non applicant Nos.2 and 3 therein had executed registered sale deeds on 10.01.1994 in respect of various plots, of which layout was sanctioned by the

competent authority. Some of the purchasers had expired and, therefore, their legal representatives along with the other purchasers are the applicants. The applicants are contending that they are the rightful owners since the date of purchase and they wanted to develop the plots by making construction over the same. Since this Court had granted *status quo* while admitting the Second Appeal, the applicants are unable to develop their plots and, therefore, their rights are prejudiced. No prejudice will be caused to the non applicant No.1-original appellant or the non applicant Nos.2 and 3, if the present applicants are added as party respondent.

4 The applicant in Civil Application No.10179 of 2019 submits that he had purchased the property from original respondents way back in the year 1994. He is in possession of the property sold by the original respondents. He contends that he was not aware about the litigation pending between non applicant No.1 i.e. Suyog Co-operative Housing Society with the other respondents in the Second Appeal. He contends that the property described in para No.2 of his application was originally owned and possessed by one Chhagan Popat Gawali and Ramesh Popat Gawali. They were in need of money and, therefore, they sold the plots in favour of applicant and his brother Sudhir by sale deed dated 07.01.1994. There was a litigation pending before this Court in respect of said property, which was filed by the

original owners and, therefore, he checked the status and existence of Suyog Co-operative Housing Society, who had filed Second Appeal before this Court. After due inquiry, it came to his knowledge that the society has gone into liquidation and the public notice in that regard was published in daily newspaper Dainik Murder of 01.01.2017. The applicant contends that after following due process of law the Deputy Registrar, Co-operative Societies, Dhule has passed order on 08.05.2018 under Section 21 of the Maharashtra Co-operative Societies Act and thereby cancelled the registration of Shri. Suyog Co-operative Housing Society, which is the appellant in the Second Appeal. It is contended that as the registration of the society is cancelled, the society cannot prosecute the Second Appeal further. The applicant is an interested person as the properties were the subject-matter and they were purchased by the applicant way back in the year 1994. He, therefore, prayed for his impleadment as party respondent.

5 The applicants in Civil Application No.6050 of 2021 have contended that the suit property was allotted to respondent No.1 i.e. Suyog Co-operative Housing Society on 05.02.1985 by learned Collector for erecting residential houses. Accordingly, the layout was got sanctioned. There were about 158 members of the society, of which a list is annexed. According to these applicants, the said society is still in existence and by any order of

competent authority or Court it has not gone into liquidation or dissolution. They are the beneficiaries of the society and they are ready to purchase the property. It appears that these applicants are in fact, challenging Civil Application No.10179 of 2019 contending that the applicant therein has no *locus standi* to make allegations against the society-respondent No.1. It was then contended that the applicant in Civil Application No.10179 of 2019 has purchased part of suit property, illegally and in violation of the orders passed by this Court in Second Appeal as well as in civil applications, for which contempt application has been filed. It is then contended that the applicant Nos.1 and 2 to this application had purchased the plots in the suit property from respondent No.1 by due process since 1985, that is, the formation of the society. By this application, these applicants pray for their impleadment as party respondent.

6 The applicants in Civil Application No.6737 of 2013 have contended that the respondent Nos.2 and 3 were the original owners of the disputed land. They had executed sale deed in favour of the applicants on 05.01.1994 of respective plots to the applicants. They were put in possession of the said plots after the registration of the sale deeds. They came to know about the litigation before this Court in second week of December, 2012. Since their rights would be affected in the litigation, they are necessary

parties. Therefore, they prayed for addition of their names as party respondent.

7 Say has been given on behalf of the respondent No.1-original appellant to the three applications. They are given separately and are along with various documents. In the nutshell, it can be said that the society is contending that still it is in existence and willing to continue the litigation. As against Civil Application No.6737 of 2013, it is contended that the subject land was acquired by State Government under the provisions of MHADA Act. As a part of the acquisition proceedings, the possession of the land was taken over by the Government from the original owner. It was then allotted to the appellant - Suyog Co-operative Housing Society. The society has 158 members from lower middle class. It has been contended that when original owner subsequently started obstructing the society, it had filed Regular Civil Suit No.449/1985 for injunction. The learned Trial Court decreed the suit on 23.11.1992. The original owners preferred Regular Civil Appeal No.133/1992, which was allowed and the decree passed by the learned Lower Court was set aside. Hence, the society has filed Second Appeal, which has been admitted. It is stated that in the meantime original owner also instituted Regular Civil Suit No.441/1987 for seeking declaration of title. During the pendency of the said suit, for substantially the same relief, the

original owner also filed Writ Petition No.2027/1996. In this writ petition, this Court directed the parties to maintain *status quo* in respect of possession by order dated 29.04.1991. However, even before the limitation to file Second Appeal was expired. The original owners executed sale deed in respect of more than 100 plots. In fact, all the purchasers were well aware about the entire litigation. All that has been done just to frustrate the litigation filed by the society. Thereafter, there was also Regular Civil Suit No.441/1987, which came to be decreed by learned Trial Court on 30.10.1993. It was against the Government as well as the society. They were defendants therein. They had challenged the Judgment and Decree by filing Regular Civil Appeal Nos.99/1997 and 100/1997 respectively. The First Appellate Court allowed the appeal filed by the Government as well as the society on 04.07.2007 and set aside the decree passed in favour of the original owners. However, while allowing the said appeal, the First Appellate Court had remanded the matter to Trial Court for the consideration afresh. After the remand, the learned Trial Judge has dismissed the suit. The Writ Petition No.2025/1996 was dismissed by this Court on 16.02.2010. It has been contended that the parties to the civil applications are not necessary parties to decide the dispute in question and, therefore, they need not be added as party respondent.

8 As regards the Civil Application No.10179 of 2019 it has been contended that the application has not been filed with bona fide intention. It is denied that the society is not in existence. The said statement has been made with an intent to get chance of getting the Second Appeal disposed of without the contest on merits. It is stated that the document, which has been attached to the said application, does not consists of name of the present respondent No.1-appellant. The name of the appellant is, “Suyog Co-operative Housing Society, Deopur, Dhule” in the order passed by the Sub-Registrar, Co-operatives. The society, which went into liquidation is said as, “Shri. Suyog Sahakari Gruhnirman Sanstha, Mahindale, Tq. & Dist. Dhule”. Therefore, even the applicant to Civil Application No.10179 of 2021 is not necessary party to the litigation.

9 In respect of Civil Application No.2541 of 2021, the respondent No.1’s affidavit-in-reply states that those applicants are not necessary parties nor they are proper parties. It is then stated that if these applicants are allowed to contest the matter then the appeal will become shapeless and it would be prejudicial to the appellant.

10 Heard all the respective learned Advocates for the respective parties in respective Civil Applications.

11 It will have to be mentioned that each one of the Advocate representing the applicant has taken this Court through every document which is on record and annexed to the applications. So also, the learned Advocate appearing for the respondent No.1-Society has also taken this Court through all the documents and the affidavits-in-reply as well as the portions of the Judgments of the Lower Courts.

12 From the submissions those have been made on behalf of both parties, it can be seen that the parties are claiming interest in the suit property. All of them are stated to be the purchasers. The suit was filed on 18.07.1985 before Civil Judge Junior Division, Dhule. All the applicants, who are claiming interest in the suit property, contend that their sale deed is after the date of the suit. Some of them claim to be the members of appellant and others are claiming that the original defendants had sold out the property to them. In short, all the applicants' interest appears to be created during the pendency of the litigation and, therefore, it would attract Section 52 of the Transfer of Property Act i.e. Doctrine of *lis pendens*. We need not go much into detail at this stage, as to whether the person who sold the property to each applicant was competent to execute such sale deed or not. Yet, the fact remains that the plaintiff-appellant society itself had 158 members. Now, as per the applicant in Civil Application No.10179 of 2019,

the appellant society has gone into liquidation. Certain documents have been produced on record, especially the order passed by learned Sub-Registrar, Co-operative Societies, Dhule on 08.05.2018. As per this order the society, which went into liquidation, is by name “Shri. Suyog Sahakari Gruhnirman Sanstha Maryadit, Mahindale, Tq. & Dist. Dhule”. The suit that was filed by the plaintiff - present appellant in the Second Appeal is by name “Suyog Co-operative Society Limited, Deopur, Dhule”. So, there appears to be difference. It would then be endeavour for the applicant in Civil Application No.10179 of 2019 to prove that the society which named in the order of dissolution is the same that of plaintiff. However, prima facie it does not appear to be so. But then the applicant in that application is also claiming his interest by way of sale deed.

13 Reliance can be placed on **A. Nawab John and others vs. VN. Subramaniam, 2013 (1) Mh.L.J. (S.C.)**, wherein it has been observed -

“The effect of Section 52 of Transfer of Property Act, 1882, which incorporates the doctrine of *lis pendens* is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The *pendente lite* purchaser would be entitled to suffer the same legal rights and obligations of his vendor as may be eventually determined by

the Court and, therefore, the Supreme Court was of the view that the application for impleadment *pendente lite* purchaser as party must be liberally considered.”

Definitely, the decision of the Second Appeal would affect the applicants, who appears to have purchased the plots by registered sale deed and that too for consideration and, therefore, all of them can be termed as necessary parties. Merely because the scope of the Second Appeal would increase the applications cannot be rejected. Rather rights of all the parties would be decided in one litigation only. Hence, following order.

ORDER

1 Applications except Civil Application No.10179 of 2019 stand allowed in entirety and disposed of.

2 Civil Application No.10179 of 2019 stands partly allowed.

The prayer of disposing of the Second Appeal without the contest on merits stands rejected. However, the prayer for impleading the applicant as party respondent stands allowed.

3 All the applicants in all the applications be added as respondents.

4 Amendment to that effect be carried out by the original appellant to the Second Appeal, within a period of 15 days from today.

(Smt. Vibha Kankanwadi, J.)

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