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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3632 OF 2021

Ranvir Balwantrao Deshmukh and Another PETITIONERS

VERSUS

Surendra Gendmal Bhathiya and Others RESPONDENTS

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Mr. S. V. Chandole, Advocate for the petitioners

Mr. Sameer S. Kurundkar, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the Civil Judge, Senior Division, Parbhani below Exhibit-108 in Special Civil Suit No. 43 of 2011, thereby rejecting the application filed by the petitioners under Order I, Rule 10 read with Order XXII, Rule 10 of the Civil Procedure Code.

2. The petitioners filed said application Exhibit-108 seeking their addition as party defendants in the suit, on the ground that they have purchased portion of suit property from Shri Sai Developers and Builders (Defendant No.3), on 12th July, 2013, by a registered sale deed, for consideration of Rs.39 lacs and their names have been entered into Municipal as well as in City

Survey record. According to the petitioners, defendant No. 3 Shri Sai Developers and Builders is not properly conducting the suit and, therefore, the petitioners requested to add them as defendants No. 11 and 12 in the suit.

3. The said application was resisted by the plaintiff, by filing a detail say. The Trial Court rejected the application holding that earlier, the petitioners have filed application Exhibit-74 for the same relief, raising the same contentions, which was rejected on merits and no new ground is made out by the petitioners in application Exhibit-108.

4. Heard learned advocate for the petitioners and learned advocate for respondent No.1. Perused the documents on record.

5. Admittedly, application Exhibit-74 filed by the petitioners raising similar contentions for the same prayer, is rejected by the Trial Court at earlier point of time. The petitioners have not challenged said order till date and hence the same has become final. The petitioners, therefore, could not have filed present application Exhibit-108, raising similar contentions and asking for same relief. The Trial Court is justified in rejecting the application filed by the petitioners.

6. The fact remains that the petitioners have purchased a

portion of the suit property during pendency of the suit and, therefore, the said sale transaction is covered by the provisions of *lis pendens*. The petitioners will be bound by the decree, if any, passed against their vendor.

7. There is no substance in the contention of the petitioners that defendant No. 3 – original vendor of the petitioners is not contesting the suit properly. On a query, learned advocate for the petitioners states that the fact that suit is pending since 2011 and the same is not yet decided, shows that defendant No.3 is not contesting the suit properly. This argument is unacceptable and that cannot be a ground to draw an inference that defendant No.3 is not contesting the suit properly.

8. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out to warrant exercise of extraordinary writ jurisdiction to cause interference in the impugned order. Writ petition is, therefore, dismissed. No costs. The petitioners are, however, at liberty to avail alternate remedy as may be available in law.

[NITIN B. SURYAWANSHI]
JUDGE