

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8614 OF 2015

Janardhan Maruti Gaigove and Anr.

PETITIONERS

VERSUS

Dilip Motilal Nahar & Ors.

RESPONDENTS

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Mr. D.R. Markad, Advocate for the petitioners.

Mr. Vinod Jadhav h/f. Mr. A.V. Hon, Advocate for Respondent Nos. 3, 6 and 9.

Mr. T.K. Sant h/f. Mr. S.S Bora, Advocate for Respondent No. 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JUNE, 2022

ORDER :

1. This petition filed under Article 227 of the Constitution of India, takes exception to the order passed by the learned Civil Judge, Senior Division, Newasa, District Ahmednagar below Exhibit-104 in Special Civil Suit No. 8 of 2012, thereby rejecting the application filed by the petitioners under Order I Rule 10 of Civil Procedure Code.

2. Special Civil Suit No. 8 of 2012 is filed by the present respondent Nos. 1 and 4 for partition and separate possession of the ancestral property.

3. It is the case of the petitioners that defendants no. 2 and 5 entered into an agreement of sale of part of suit property, with them and therefore, they are interested, necessary and are proper parties to the suit. Hence, they moved said application Exhibit-104.

4. Having heard learned advocate for the petitioners and learned advocate for the respondents and after perusing documents placed on record, this Court is of the considered view that, the Trial Court is justified in rejecting the application filed by the petitioners.

5. Admittedly, the said transaction is not complete and present suit is filed for partition and separate possession. Temporary injunction is granted, in the suit, which is confirmed by this Court. The plaintiff is *dominus litis* and he cannot be compelled to add a party, without whom partition suit can be effectively decided. There is no substance in the claim of the petitioners that they have right to claim specific performance of agreement to sale that cannot be decided in the present suit.

6. The learned advocate for the petitioners placed reliance on *Rama @ Ramdas Bapu Khakal and another Vs. Narayan Govinda Khakal and others*, (2018 (1) Mh.L.J. 65). In the said judgment a co-ordinate bench of this Court has held, *"Alienee pendente lite would always be bound by verdict of Court in suit and would always be subject to final decree that would be passed. Such an alienee could be brought on record as a defendant under Order I Rule 10 of Civil Procedure Code if it appears that his substantial interest in suit property would depend upon verdict in said suit."*

7. In the case in hand no substantial interest of the petitioners is disclosed, as according to the petitioners only agreement to sale is executed in their favour. The above ratio, therefore, is not helpful to the petitioners.

8. The Trial Court has passed a reasoned order, there is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merits is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE