

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

WRIT PETITION NO.6740 OF 2013

1. Jagdish Vishnudas Dhoot
Age: 37 years, Occu: Agriculture
R/o: Lokhand Galli, Latur
2. Shrikant Shirnivas Soni
Age: 28 years, Occu: Agriculture
R/o: Kapad Galli, Latur

... Petitioners
[Original Applicants]

Versus

1. Smt. Geetadevi Dhanraj Joshi
Age: 63 years, Occu: Household
R/o: Gat No.303, 3rd Floor,
Indralaxmi Prastra Building No. 3/2/220/223,
Somasundaram Street, Kalasiguda,
Secunderabad (A.P.)
2. Sow, Nirmala Vikas Ojza
Age: 38 years, Occu: Household,
R/o: As above
3. Smt. Gangabai Bankatlal Joshi
Since Deceased per LRs.
 - 3A. Manik Bankatlal Joshi
Age: 60 years, Occu: Service
R/o: Latur
 - 3B. Leela Kishanlal Sharma
Age: 55 years, Occu: Household
R/o: Aurad Shahjani Tal Nilanga,
Dist. Latur
 - 3C. Tara Suryakant Pattewar
Age: 45 years, Occu: Household,
R/o: Latur
4. Tukaram Nivrutti Madane
Age: 36 years, Occu: Agriculture
R/o: Latur

5. Subhash Nivrutti Madane
Age: 40 years, Occu: Agriculture
R/o: Latur
6. Jawahar Sahakari Soot Girni Ltd.
Through its Chairman
Bhagwan Kerbaji Nagargoje
Age: 64 years, Occu: Service
R/o: Latur
7. Leela Kishanlal Sharma
Age: 55 years, Occu: Household
R/o: Aurad Shahjani Tal. Nilanga,
Dist: Latur

... Respondents

[Respondent Nos.1 & 2/Original
Plaintiffs and Respondent Nos.3 to 7/
Original defendants respectively]

...

Mr. Satyajit S. Bora, Advocate for Petitioners

Mr. V. J. Dixit (Senior Advocate) i/b Mr. S. V. Dixit, Advocate for
Respondent Nos. 1 & 2

Mr. N. B. Khandare, Advocate for Respondent No.7

Mr. Vinod Jadhav h/f Mr. V. D. Hon (Senior Advocate), Advocate for
Respondent No.6

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th June, 2022

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the respective parties.

2. The petitioners are aggrieved by the judgment and order
passed by the learned District Judge-2, Latur below Exhibit-35 in
Regular Civil Appeal No.179/2006, thereby rejecting the application

filed by the petitioners under Order 1 Rule 10 of the Civil Procedure Code (for short "CPC").

3. Special Civil Suit No.7/1980 was filed by the respondent nos.1 & 2 for possession based on title, in respect of Survey No.17 admeasuring 24 acres 21 gunthas, situated at Village Kanheri, Taluka Latur, District Latur (for short 'the suit land') against respondent no.7. The suit was decreed on 01-11-2006. The respondent no.7 has preferred Regular Civil Appeal No.179/2006 challenging the said decree.

4. The petitioners herein have filed Special Civil Suit No.14/2007 against respondent nos.1 & 2, respondent no. 7 and others for specific performance of contract of the suit land claiming that respondent nos.1 and 2 have entered into an agreement of sale of the suit land with the petitioners on 30-12-2006 and they have paid total amount of Rs.1,50,000/- to respondent nos.1 & 2. In the said suit, interim injunction is granted that respondent nos.1, 2 and respondent no.7 shall not alienate the suit land.

5. In these facts, the petitioners moved an application (Exhibit-35) under Order 1 Rule 10 of CPC claiming that they may be arrayed as party respondents to the appeal for protecting their rights in the suit land as assignees of respondent nos.1 & 2. They

contended that they have learnt that the appellants and respondents in the appeal are trying to settle the matter outside the Court, by surrendering their interest and rights in the suit land, so as to cause loss and to deprive the appellants from exercising their rights. If any compromise is arrived, that would necessarily affect the interest of the petitioners and therefore, the petitioners need to be added as respondents in the appeal.

6. The said application was resisted by the respondent nos.1 & 2/original plaintiffs and respondents/defendants. The appellate court has rejected the said application on the ground that the petitioners have already filed Special Civil Suit No.14/2007 for specific performance of contract and injunction and all the parties to the proceeding are parties to the said civil suit. Therefore, the said suit is sufficient to protect the interests of the petitioners. The appellate court, therefore, held that the petitioners are neither necessary, nor proper parties to the appeal.

7. Heard the learned Advocate for the petitioners, learned Senior Advocate for respondent nos.1 and 2, learned Advocate for respondent no.7 and the learned Advocate for respondent no.6.

8. The learned Advocate for the petitioners strenuously submits that as the petitioners' interest is directly involved in the suit land,

the compromise if any arrived at by the respondents in the appeal, would seriously jeopardize the interest of the petitioners. Hence, the petitioners are required to be arrayed as respondents in the appeal. He submits that Rule 10 of Order 22 of CPC recognises the right of a transferee to be impleaded as a party to the proceedings. Therefore, according to him, the impugned order is liable to be quashed and set aside and the application (Exhibit-35) deserves to be allowed.

9. In support of his submissions, he relied on **Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Ors.** reported in **2013 (5) SCC 397.**

10. The learned Senior Advocate for respondent nos.1 & 2 supported the impugned order. According to him, in the citation relied upon by the learned Advocate for the petitioners, facts were different, as sale deeds were executed and therefore, interest in the property was transferred. In the present case, only agreement of sale is executed and therefore, the interest in the property is not transferred. The petitioners have not claimed that they are in possession of the suit land and therefore, they are not necessary party in the present matter. The petitioners' interest would be protected in the suit filed by them.

11. The learned Advocate respondent no.7 submits that merely because an unregistered agreement to sale is executed in favour of the petitioners, that too without delivery of possession, no interest is created in favour of the petitioners. The petitioners have only limited right to sue for specific performance.

12. In support of his submissions, he relied on **Suraj Lamp and Industries Private Limited (2) Through Director Vs. State of Haryana and Another** reported in **(2012) 1 SCC 656**.

13. The learned Advocate for respondent no.6 has adopted the arguments of respondent nos.1 and 2 and respondent no.7.

14. Admittedly, the agreement to sale executed in favour of the petitioners by respondent nos.1 & 2 is an unregistered document and there is no recital of delivery of possession in it. The petitioners have already filed Special Civil Suit No.14/2017 for specific performance of contract against respondent nos.1 & 2 and respondent no.7 and others. In the said suit, the respondents are directed not to alienate the suit land.

15. In *Suraj Lamp and Industries Private Limited (2) Through Director (Supra)*, it is held :

"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property.

This Court in Narandas Karsondas v. S.A. Kamtam observed:

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra.) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. ... The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. ... that only on execution of conveyance, ownership passes from one party to another..."

17. In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra, this Court held: (SCC p. 619, para 10)

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 & 55 of the

TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

16. In view of the above ratio, it is clear that an agreement of sale does not, of itself, create any interest in or charge on such property and a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) and in absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Therefore, there is no substance in the arguments of the petitioners that the unregistered agreement of sale has created interest in their favour and hence they are necessary parties.

17. In Thomson Press (India) Ltd. (Supra), the Supreme Court was considering impleadment of transferee pendente lite in a suit for specific performance of contract for sale. The property in suit was transferred pendente lite. It was held that the transfer is not void ab initio and transferee can be impleaded as party by virtue of Order I, Rule 10 r/w Order XXII, Rule 10 of CPC.

18. The case in hand is covered by the ratio in Suraj Lamp and Industries Private Limited (Supra). Since the petitioner cannot be

termed as transferee, as no right or interest is created in petitioners by way of unregistered agreement to sale and in absence of delivery of possession of the suit land, this citation is of no help to the petitioners.

19. The appellate court has rightly appreciated the facts and record and has correctly applied the ruling cited before it and has rightly come to a conclusion that the petitioners cannot be called as transferee on the basis of alleged agreement of sale and since they have already filed Special Civil Suit No.14/2007, the same is sufficient to protect their interest. The impugned order passed by the appellate court does not suffer from any illegality or perversity. There is no merit in the challenge raised by the petitioners in the present writ petition. The writ petition, being devoid of merits, is dismissed. Rule discharged. No costs. Interim stay is vacated.

[NITIN B. SURYAWANSHI, J.]

Sameer