

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

WRIT PETITION NO.10450 OF 2019

**BABAN DAMODHAR KOLSE AND OTHERS
VERSUS
TARABAI BABAN KOLSE AND ANOTHER**

...

Advocate for Petitioners : Mr. R. R. Karpe
Advocate for Respondent No.2 : Mr. R. L. Kute

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th JUNE, 2022

PER COURT :

1. The petitioners are aggrieved by the order passed by learned Civil Judge Junior Division, Rahuri, below Exhibit-38 in Regular Civil Suit No.746/2013, thereby rejecting the application filed by them under Order I Rule 10 of the Code of Civil Procedure.

2. Respondent No.1 filed the suit against respondent No.2 for a declaration that the registered sale deed executed by her on 07-12-2009 be declared as bogus and the same may be quashed and set aside. Respondent No.2 appeared in the said suit and filed written statement, thereby resisting the suit. It is contended that the suit property was given to respondent No.1 by the petitioner in the year 1979 towards maintenance and since then, the said property was owned and possessed by respondent No.1. In view of the decree passed by the competent Civil Court, in Regular Civil

Suit No.1168/1981, on 07-12-2009 the suit property was sold by the respondent No.1 to respondent No.2 for a valuable consideration.

3. In the suit, petitioners filed application Exhibit-38 claiming that they are in possession of the suit property and therefore, they may be impleaded as a necessary parties in the suit. This application was resisted by respondent No.1 and the trial Court has rejected the same. Hence, the present petition.

4. Heard learned advocate for the petitioners and the learned advocate for respondent No.2. Perused the documents placed on record.

5. The record indicates that the suit property came in possession of respondent No.1 in terms of decree dated 22-12-1981, passed by learned Civil Judge Junior Division, Rahuri in R.C.S. No.1168/1981. It is recorded in the decree that petitioner No.1 has relinquished his rights in the suit property, in favour of respondent No.1. The respondent No.1 sold the suit property to respondent No.2 by way of a registered sale deed dated 07-12-2009. The sale deed contains a specific recital that possession of the suit property is given to respondent No.2.

6. There appears substance in the contention of respondent No.2 that a collusive suit is filed by petitioners in connivance of the present petitioners. Respondent No.2 by filing

certified copy of the written statement in R.C.S. No.545/2009 has pointed out to the trial Court that the respondent No.1 has specifically averred that she is owner and possessor of the suit property.

7. Admittedly, the present suit is filed for declaration in respect of the registered sale deed dated 07-12-2009 between the respondent No.1 and respondent No.2. Issue of possession does not arise in the said suit. Presence of the petitioners is not necessary for effective adjudication of the dispute between respondent Nos. 1 and 2.

8. In this view of the matter, the trial Court is justified in rejecting the application filed by the petitioners. The trial Court has assigned proper reasons while passing the impugned order. No illegality or perversity is found in the order impugned in the present petition. Writ petition being devoid of merits is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)