

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.11995 OF 2022

CHANDRABHAGA ALIAS SAKUBAI UTTAM
PHAPALE AND ANOTHER

VERSUS

ARJUN KARBHARI KEDAR AND OTHERS

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Advocate for Petitioners : Mr Vinod Y. Bhide

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

PER COURT :

1. Petitioners have filed present writ petition challenging order dated 25.07.2022 passed by the Jt. Civil Judge, Senior Division, Sangamner, Dist. Ahmednagar rejecting petitioners' application for their impleadment in the suit as third party under the provisions of Order I Rule 10 (2) of the Civil Procedure Code, 1908.
2. Petitioners are sisters of the defendants, who have executed agreement to sale, specific performance of which is sought by the plaintiff in the suit. The defendants claim that the property alleged to be sold is undivided property in which they have their share.
3. In the suit filed by the plaintiff for specific performance of the agreement, petitioners cannot get agitate their claim with regard to a share in the suit property. Neither petitioners have any say with regard to the specific performance of the agreement to sale executed between the plaintiffs nor plaintiff would have any say with regard to the dispute

between the defendants and petitioners with regard to the nature of the property and their shares. In such circumstances, petitioners cannot be treated to be necessary parties to the suit.

4. Petitioners have independent cause of action against the defendants for which they can file their own suit. The trial court has granted such liberty to petitioners.

5. Mr Bhide, learned counsel for petitioners would argue that filing of fresh suit would result in multiplicity of proceedings. He would submit that since the property in which petitioners claim share is being sold by decree of specific performance, the rights of petitioners would be affected. The contentions though may appear to be attractive in first blush, the same is completely misplaced. The rights, if any, of petitioners against original defendants in the suit are independent of the lis between the plaintiff and defendants. Petitioners could have initiated their own proceedings claiming share in the property much before execution of agreement to sale. Therefore, there is absolutely no co-relation between the execution of agreement to sale by the defendants and rights, if any of petitioners in the suit property.

6. Mr Bhide has relied upon the Judgment of Allahabad High Court in case of ***Kisan Uchattar Madhyamik Vidyalaya Samiti, Deoria and others Vs. Illrd Addl. District Judge, Deoria, and others reported in AIR 1989 ALL AHABAD 168*** in support of his contention that the Civil Court has wide powers under the provisions of Order I Rule 10(2) of the Civil Procedure Code to implead any party which is necessary for proper

adjudication of suit. The facts in the Judgment are clearly distinguishable. In that case, the suit was filed for permanent injunction against the defendants for restraining them from interfering with the functions of the Head Master. Another person claiming to be Head Master sought impleadment in the suit which was allowed by the trial court. The Allahabad High Court has upheld the order. The facts are thus, clearly distinguishable and the Judgment has no application to the present case.

7. Consequently, the writ petition is devoid of merits and the same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

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