

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

WRIT PETITION NO.14267 OF 2021

1. Shri Kisan Sadashiv Paik (Deceased)
2. Sau. Yashodabai Kisan Paik (Deceased)
3. Shri Milind Kisan Paik,
Age: 50 years, Occu: Agriculture,
4. Rajabhau Kisan Paik,
Age: 41 years, Occu: Agriculture,

Both 3 & 4 are

R/o. Yesgaon, Tal: Kopargaon,
Dist: Ahmednagar.

... Petitioners

Versus

1. Shivaji Kisan Paik,
Age: 51 years, Occu: Labourer,
R/o. Yesgaon, Tal: Kopargaon,
Dist: Ahmednagar.
At present R/o. Shirwanegaon Gaothan,
Sector-1, Nerul, Navi Mumbai.
2. Jijabai Kisan Paik (Deceased),
3. Suman Madhav Bhalerao,
Age: 44 years, Occu: Household,
R/o. Gorobangar, Kopargaon,
Tal: Kopargaon, Dist: Ahmednagar.
4. Sau. Usha Lahanu Shingade,
Age: 44 years, Occu: Household,
R/o. Brahmangaon, Tal: Kopargaon,
Dist: Ahmednagar.
5. Shri. Babasaheb Kisan Paik,
Age: 54 Years, Occu: Labourer,
6. Shri. Raosaheb Kisan Paik,
Age: 46 Years, Occu: Service,
7. Sau. Satyabhama Bhimrao Jadhav,
Age: 59 Years, Occu: Household,
8. Sau. Manda Sudhakar Gade,
Age: 52 Years, Occu: Household,

Respondent No. 5 to 8 are
R/o. Yesgaon, Tal: Kopargaon,
Dist: Ahmednagar

... Respondents

...
Advocate for Petitioners : Mrs. Rashmi Kulkarni h/f
Mr. Sanket Kulkarni
Advocate for Respondent Nos. 1,3, 4 & 6 : Mr. A. D. Shinde

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 20th JULY, 2022
PRONOUNCED ON : 16th SEPTEMBER, 2022

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
2. This petition filed under Article 227 of the Constitution of India, impugns order dated 12/11/2021, passed by learned District Judge, Kopargaon, below Exhibit-41 in Regular Civil Appeal No.46/2019.
3. Respondent Nos. 1 and 2 filed Regular Civil Suit No.156/2011, in the Court of learned Joint Civil Judge, Junior Division, Kopargaon, for partition and separate possession of suit properties, contending that respondent No.2 Jijabai was married with petitioner No.1 Kisan and respondent No.1 Shivaji is their son. Kisan performed second marriage with petitioner No.2 Yashodabai and petitioner Nos. 3 and 4 are children of Yashodabai and Kisan. Petitioners/defendants resisted the suit. Trial Court by judgment

and decree passed on 02/03/2019 held that children of first wife Jijabai and Kisan i.e. respondent No.1 Shivaji have 1/4th share and petitioner No.1 Kisan have 1/4th share and children of second wife Yashodabai and Kisan i.e. petitioners herein have share in Kisan's share. Petitioners challenged the said judgment by filing R.C.A. No.46/2019, before District Court, Kopergaon.

4. According to petitioners, deceased Kisan executed registered will deed dated 15/03/2017 in favour of petitioners stating therein that after death of Kisan property which shall fall to share of Kisan in R.C.S. No.156/2011 will be given to petitioners herein, Satyabhama and Manda (respondent Nos. 7 and 8 herein) in equal share. It is the case of petitioners that respondents Shivaji, Suman and Usha i.e. children born to Jijabai have executed two sale deeds on 09/12/2020 in respect of Gut No.123 in favour of Surekha Shivaji Paik and Pramila Raosaheb Paik, which was executed during pendency of R.C.A. No.46/2019 and therefore, the sale deeds are not executed bona fide and they are executed to defeat share of petitioners accrued under will deed dated 15/03/2017.

5. In this background, respondents filed application Exhibit-41 seeking addition of *pendente lite* purchasers as party respondents in appeal. Application Exhibit-66, is filed by respondent

No.1 seeking temporary injunction against petitioners. By application Exhibit-51, petitioners prayed for adducing evidence in respect of will deed placed on record.

6. By common order, appellate Court directed addition of subsequent purchasers of suit property as parties to the appeal. It is held that production of evidence in respect of will and application for injunction shall be considered later. Petitioners are aggrieved by direction of adding purchasers as party respondents to appeal.

7. In support of his submissions, learned advocate for petitioners placed reliance on *Sriram Housing Finance and Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust, [MANU/SC/0819/2022]* and *Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Others, [(2020)13 SCC 773]*. Learned advocate for respondents, while opposing petition, relied on *A. Nawab John and Others Vs. V. N. Subramaniam, [2012(7) SCC 738]*.

8. I have given due consideration to rival submissions of respective parties and perused memo of writ petition, grounds raised therein, documents placed on record and impugned order.

9. While decreeing suit, trial Court has only carved out four shares. No share is allotted to petitioner Nos. 2 to 4 and respondent Nos. 4 to 8, since they are children of second wife. Considering this aspect and the fact that after decision of suit,

names of respondent Nos. 3 and 4 i.e. Suman and Usha were entered in record of rights and they have sold the property to Surekha Shivaji Paik and Pramila Raosaheb Paik during pendency of appeal, trial Court has rightly held that subsequent purchasers are necessary parties. Trial Court is justified in holding that they are required to be made parties to the proceedings for proper adjudication of dispute on merits. Trial Court is right in holding that contentions in respect of will deed and claim of injunction shall be considered subsequent to addition of purchasers as parties to the appeal.

10. Record further indicates that appellate Court has directed parties to maintain *status quo* by order dated 06/07/2021, which was continued from time to time. After passing of impugned order, petitioners filed application Exhibit-80 and prayed for extension of interim relief, till this Court passes interim order. The said application was allowed and *status quo* order was extended till 22/12/2021.

By order dated 16/12/2021, this Court granted interim relief in favour of petitioners in terms of prayer clauses 'D' and 'E' i.e. stay to the trial Court's judgment and order, passed in R.C.S. No.156/2011 and stay to impugned order passed below Exhibit-41.

11. In ***Sriram Housing Finance and Investment India Ltd.***

(supra), the Hon'ble Apex Court by considering Order XXI Rule 97, which deals with resistance or obstruction to possession of immovable property and considering Rules 99 and 101 of Order XXI, held that *"....appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99."*

This decision is rendered in different facts and does not assist petitioners.

12. In ***Kasturi Vs. Iyyamperumal and Others, (2005) 6 SCC 733***, it is held that *"question of jurisdiction of Court to invoke Order 1 Rule 10 to add a party who is not made a party in the suit by the plaintiff shall not arise unless party proposed to be added has direct and legal interest in the controversy involved in the suit."*

13. In ***Gurmit Singh Bhatia*** (supra), by relying on ***Kasturi*** (supra), the Hon'ble Apex Court held :-

"5.5 It is further observed and held by this Court in Kasturi [(2005) 6 SCC 733] that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other

persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that the plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.

5.6 Therefore, considering the decision of this Court in case of Kasturi (supra), the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original defendant no.1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs.

6. Now so far as the reliance placed upon the decision of this Court in the case of Robin Ramjibhai Patel [(2018) 15 SCC 614] and the decision of the Bombay High Court in Shri Swastik Developers [(2014) 2 Mh.L.J. 968], relied upon by the learned Senior Advocate for the appellant is concerned, the aforesaid decisions shall not be applicable to the facts of the case on hand as in both the aforesaid cases, it was the plaintiff who submitted an application to implead the third parties/subsequent purchasers who claimed title under the vendor of the plaintiff. Position will be different when the plaintiff submits an application to implead the subsequent

purchaser as a party and when the plaintiff (sic subsequent purchaser) opposes such an application for impleadment. This is the distinguishing feature in the aforesaid two decisions and in the decision of this Court in Kasturi (supra)."

14. Considering above ratio, since appellate Court was of the view that respondents who sold property are making submissions on behalf of purchasers, which is not found desirable, and considering admitted position that property is sold, purchasers are necessary parties so as to effectively adjudicate dispute.

15. In **A. Nawab John and Others** (supra), it is held :-

"17. It is settled legal position that the effect of Section 52 is not to render transfers affected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

"The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."

[Sanjay Verma V. Manik Roy, AIR 2007 SC 1332, para 12]

18. Such being the scope of Section 52, two questions arise: whether a pendente lite purchaser (1) is entitled to be impleaded as a party to the suit; (2) once impleaded what are the grounds on which he is entitled to contest the suit.

19. This Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another, AIR 1958 SC 394, that, "justice requires", a pendente lite purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendente lite, she would be bound by the decree against her vendor. There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a matter of right, to get impleaded in the suit, this Court in (2005) 11 SCC 403, held that :

"Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a

party. But the transferee endent elite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee endent elite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff.

Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendent elite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee endent elite of an interest in immovable property is a representative in interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case. [Emphasis supplied]

The preponderance of opinion of this Court is that a pendent lite purchasers application for impleadment should normally be allowed or considered liberally..”

16. In the present case, appellate Court has judiciously exercised discretion and has directed alienees to be joined as party to enable them to protect their interest as subsequent purchasers, as they are entitled to be heard in the matter on merits.

17. Taking into consideration the facts and circumstances of present case, this Court is of the considered view that *status quo* order should be continued till final decision of the appeal.

18. Considering the conspectuous of facts, this Court is of opinion that trial Court has rightly exercised discretion and there is no legal or factual error in order impugned in present petition. No case is made out by petitioners to warrant interference in exercise of extraordinary writ jurisdiction.

19. In the result, writ petition is dismissed. Rule is discharged.

20. In the peculiar facts of the case, *status quo* order passed by appellate Court shall continue to operate till final decision of the appeal. Hearing of the appeal is expedited.

(NITIN B. SURYAWANSHI, J.)