

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3799 OF 2018

Rakesh Nandlal Gunani

..Petitioner

Versus

Firoz Shabbir Khan and Ors.

..Respondents

Mr. Kuldeep U. Nikam, for the Petitioner.

Mr. Nagesh Y. Chavan, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th MARCH, 2022

PC.

1. Petitioner's suit for specific performance being Special Civil Suit No.40 of 2014 was sought to be resisted by the respondent No.1 by seeking his impleadment under Order I Rule 10 of the CPC. The prayer to that effect moved through Exh.29 is allowed vide impugned order dated 8th December, 2017. The case of the respondent No.1/third party is, there exist an agreement of sale dated 15th June, 2012 executed by respondent Nos.2 and 3 and as such he has better claim than the present petitioner over the suit property.

2. Admittedly, independent suit for injunction is pending at the behest of respondent No.1, wherein I am informed that prayer for grant of simplicitor injunction restraining respondent Nos.2 and 3 from creating third party interest is moved. In the aforesaid

background and having regard to the fact that respondent No.1 is not in possession of the suit property, he cannot be termed as a necessary or appropriate party to the suit in question.

3. In that view of the matter, in my opinion, the Court below has erred in allowing application Exh.29.

4. As such, petition stands allowed.

5. The order impugned dated 8th December, 2017 passed in Special Civil Suit No.40 of 2014 below Exh.29 is hereby quashed and set aside.

6. Application Exh.29 stands rejected.

[NITIN W. SAMBRE, J.]