

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

**WRIT PETITION NO.4211 OF 2016**

Ramu Baloba Kanpile and Ors. .... Applicants/Petitioners  
Vs.  
Damodar Baloba Kanpile and Ors. .... Respondents

.....

Ms. Janhavee Joshi i/by Mr. Sanjay S. Gawde for the  
Applicants/Petitioners.  
Mr. Siddharth S. Wakankar for Respondent Nos.1 to 4, 6, 6a to  
6e, and 8, 7a to 7d and 7f.

**CORAM: SANDEEP K. SHINDE, J.**

**RESERVED ON : AUGUST 26, 2022  
PRONOUNCED ON: AUGUST 29, 2022.**

**P.C.**

1. Question, for consideration is whether after passing the preliminary decree in the suit for partition, transferees of the Suit Property (Part), during the pendency of the appeal, are the parties necessary, to enable the Court to effectively and completely adjudicate upon and settle all the questions in the Appeal ?

2. Petitioners' suit for partition was partly decreed by the judgment dated 28<sup>th</sup> April, 2006. Defendants in the said suit presented the Regular Civil Appeal No.616 of 2006 in the Court of District Judge, Pune. Pending appeal, original defendants vide

sale deed dated 24<sup>th</sup> September, 2008 sold and transferred portion of the suit property to the third party. Whereupon Petitioners/Decree-holders moved an application under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure, 1908 to implead the transferees as party respondents and further sought declaration that sale deed executed were illegal and not binding on them. The said application was rejected by the learned Appellate Court on the ground that subsequent purchase being governed by doctrine of lis-pendens, such purchasers were not necessary and proper parties for effective decision in the appeal. Feeling aggrieved by that order, this Petition is preferred.

3. Heard learned counsel for the Parties.

4. Learned counsel for the Petitioners in supports of her petition, relied on two judgments/orders, of this Court in the case of **Yogesh v. Keshav [2014(5)Mh.L.J.53]** and in **Munaf Qadarbhai Memon v. Mohd. Umar Aminuddin Ansari and Ors. in Writ Petition No.7446 of 2016**. In the case of **Yogesh (Supra)**, Petitioner-applicant moved an application to join himself as plaintiff in the suit, which he had purchased pending

suit from the original plaintiffs, by registered sale deed. The Trial Court declined to implead him as plaintiff on the ground that transfer during the pendency of the suit was hit by principle of lis-pendens incorporated under Section 52 of the Transfer of Property Act, 1882. In the back-ground of this fact, it was held that merely because transfer during the pendency of the suit was hit by principle of lis-pendens that cannot operate as bar for the Court to exercise power under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 to permit subsequent purchaser for being added as plaintiff. In the case of **Munaf Memon (Supra)**, application for impleadment of third party being transferee of the suit property pending appeal, was rejected by the learned District Judge in view of the provisions of Section 52 of the Transfer of Property Act, 1882. The learned Judge of this Court has held in paragraph 5 as under;

*"5. Since the respondent no.1 has sold the property in favour of the third party and the appeal filed by the petitioner against the impugned decree is already admitted, in my view, the learned trial judge ought to have allowed the said application for impleadment below Exhibit 19 on the ground that the impleadment of such party would be necessary for the purpose of disposal of the said appeal preferred by the petitioner effectively."*

. Learned counsel strongly relied on both the judgments in

support of the Petition to contend that impleadment of transferees/purchasers, Mrs. Poonam Vikas Gaikwad and Ms. Ashwini Gaikwad is necessary for complete and effective adjudication and settlement of disputes in the subject First Appeal. The submissions were opposed by the learned counsel for the Respondents. He relied on the judgment of this Court in the case of **Sahebu Dharmu Shinde (Since Deceased) v. Jagannath Mithu Shinde** in **Writ Petition No.11143 of 2017** wherein the learned Judge of this Court has held that “the Suit being for partition and as the Petitioner’s share in the joint family properties can be adjusted in the remaining properties, it is not going to necessarily affect either the interest of the Petitioner or that of the Proposed Purchasers, as such, held, impleadment of the transferees in the suit for partition.”

5. The judgments relied on by the learned counsel for the Petitioners were not rendered in the suit for partition, wherein, once, the preliminary decree is passed, addition of the parties cannot be made except in the exceptional circumstances, like death of parties, whose rights are carved out in the preliminary decree. Admittedly, in the case at hand after drawing preliminary decree, i.e., decree in the Special Civil Suit No.476 of

1999, defendants therein sold the portion of the Suit Property to the third party. In consideration of these facts, impleadment of transferee in the appeal in no manner would assist the Court, for effective and complete adjudication upon and settle all the questions therein. Even otherwise, it being suit for partition, defendants' share in the Suit Properties could be adjusted to the extent of the part of Suit Property sold by them to Mrs. Poonam Vikas Gaikwad and Mrs. Ashwini Gaikwad.

5. For all these reasons, no interference in the impugned order is called for. Petition is dismissed.

**(SANDEEP K. SHINDE J.)**

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

**INTERIM APPLICATION NO.200 OF 2020  
IN  
WRIT PETITION NO.4211 OF 2016**

Ramu Baloba Kanpile and Ors. .... Applicants/Petitioners  
Vs.  
Damodar Baloba Kanpile and Ors. ....Respondents

.....

Ms. Janhavee Joshi i/by Mr. Sanjay S. Gawde for the Applicants/Petitioners.  
Mr. Siddharth S. Wakankar for Respondent Nos.1 to 4, 6, 6a to 6e, and 8, 7a to 7d and 7f.

**CORAM: SANDEEP K. SHINDE, J.**

**DATED : AUGUST 26, 2022**

**P.C.**

1. Pending Petition, Respondent No.6 passed away. This Application seeks to bring her legal representatives on record.
2. Heard learned counsel for the Parties.
3. In view of the averments in paragraphs 18, 19 of the Application, delay caused in preferring application has been explained. Thus, delay is condoned. Application is allowed and made absolute in terms of prayer clauses (a) and (b).
- 4 Application is disposed of.

5           Petitioner to carry out consequential amendment  
within fourteen days from today.

**(SANDEEP K. SHINDE J.)**