

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 7232 OF 2016
WITH
CIVIL APPLICATION NO. 1918 OF 2016**

MR. SANJAY TUKARAM HAGAWANEPETITIONER

V/s.

SMT. MUKTABAI SADASHIV WANJALERESPONDENTS
(SINCE DECD) THROUGH LRS AND ORS

Mr. P. S. Dani, Senior counsel a/w Mr. Hitesh P. Vyas for the Petitioner
Mr. S. C. Wakankar for Respondent nos. 5 to 8
Mr. Manish M. Pabak for Respondent nos. 1A, 1B, 1D & 2A to 2D and
3A to 3E

**CORAM : NITIN W. SAMBRE, J.
DATE: FEBRUARY 14, 2022.**

P.C.:

1) Regular Civil Suit No. 4512/2012 was initially numbered as Special Civil Suit No. 215/1999 of which withdrawal is sought by Respondent-Plaintiff. In the said proceedings, Petitioner-Defendant no. 6 pursuant to the tile vested in him in 2001, invoked provisions of Order XXIII Rule 1A seeking transposition in the place of Plaintiff which prayer is rejected vide impugned order dated 29/03/2016 passed below Exhibit 202. As such, this Petition.

2) Submissions of learned senior counsel Mr. Dani are, Pursuant

to the subsequent development, I.e. Petitioner, being purchaser of the said property, under Order XXII Rule 10 of Code of Civil Procedure, he was impleaded. Based on the same, he contested the Suit and now original Plaintiff has joined hands with the Defendant resulting into Plaintiff taking out proceedings under Order XXIII of C.P.C. for simplicitor withdrawal. He would claim that Plaintiff and other co-Defendants are trying to practice fraud on the Petitioner. That being so, he was justified in seeking transposition as Plaintiff.

3) While countering the same, learned counsel for Respondent would urge that R.C.S. No. 1872/2021 is initiated by the Petitioner based on his title secured vide deed dated 29/01/2001 claiming relief of declaration and injunction. He would further claim that cause of action in the earlier Suit of 1999 cannot be said to be available to the Petitioner. That being so, he would urge that Petition is liable to be rejected.

4) Considered submissions.

5) I have perused Plaint in the Suit of 1999 which was renumbered as R.C.S. No. 4512/2012. Suit claim in the same is based on cause of action of 12/11/1988.

6) Petitioner claimed to have acquired title on 29/01/2001 and that being so, cause of action as is claimed in the earlier Suit based on event of 12/11/1998 is not available to the Petitioner as he has entered into the scene subsequent to vesting of title in him on 29/01/2001.

7) In the aforesaid background, the Court below, in my opinion was justified in rejecting the prayer for transposition.

8) That being so, no case for interference in extraordinary jurisdiction is made out. Petition as such fails, stands dismissed.

9) In view of submissions of learned senior counsel of Mr. Dani, if the Petitioner takes out prayer for amendment in R.C.S. No. 1872/2021 based on the aforesaid subsequent development, the trial Court dealing with said Suit is expected to decide the same in accordance with law without being influenced by the findings recorded herein above.

10) In view of dismissal of Writ Petition, Civil Application also stands disposed of.

[NITIN W. SAMBRE, J.]