

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

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WRIT PETITION NO.10988 OF 2019

Shri. Prithviraj Krishnarao Shinde

..Petitioner

Versus

Smt. Indubai Nanaso Wagh and Ors.

..Respondents

Mr. Rajaram V. Bansode, for the Petitioner.

Mr. Akshay Kulkarni a/w Panchshil Patil i/by A. M. Kulkarni, for the Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st APRIL, 2022

PC.

1. Decree passed in a suit for declaration and injunction is subject matter of RCA No.95 of 2012 preferred by the petitioner/defendant No.3. During pendency of appeal part of the suit property was purchased by the petitioner/defendant No.3 vide registered sale-deed dated 17th July, 2020 from plaintiff Nos.1 and 2, which subsequent events are sought to be incorporated in the written statement by way of amendment

2. Taking shelter of Section 52 of the Transfer of Property Act, lower Appellate Court rejected the prayer. As such, this petition.

3. Admittedly, purchase of property by the petitioner/

defendant No.3 is subsequent to the decree passed by the Trial Court. Part of the suit property have been purchased by the petitioner/defendant No.3, he has every right to plead the same by way of amendment of the written statement even in an appeal and such pleadings have direct bearing over the execution of the decree.

4. Though such prayer in categorical terms objected by the plaintiff No.3 i.e. respondent herein on the ground that the suit property is joint family property, the necessary consequences will follow. If the petitioner has purchased undivided share, it is for the petitioner to establish that he is entitled to for such share in suit property. To that extent, keeping the right of the petitioner/defendant No.3 open, I hardly see any reason which warrants to sustain the order impugned as reasons based on Section 52 of the Transfer of Property Act are insignificant. That being so, the order impugned is set set aside.

5. The petition as such stands allowed.

6. Application Exh.44 stands allowed.

[NITIN W. SAMBRE, J.]