

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

**CIVIL APPLICATION NO.2772 OF 2020
IN SA/613/2018**

**RIJWANABI RAHIMKHA PATHAN
VERSUS
FAHEMUNISA BEGUM SHAIKH MOHAMMAD TAHEER AND OTHERS**

...
Advocate for Applicant : Mr. Shaikh Shakil U.
Advocate for Respondent No.1: Mr. M. P. Kale

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 10.08.2023

PER COURT :

1. By this application, the applicant seeks intervention in the second appeal pending for consideration before this Court.
2. The contention of the applicant is that the suit was instituted by sister of the applicant for partition and separate possession. However, she was not made party in the suit. The suit was decreed in favour of the plaintiff and the decree was subjected to challenge by the purchaser in the regular civil appeal before the District Court. The appeal came to be dismissed. Hence, the present second appeal.

- 3 The applicant contends that she has also share in the property, which is a subject matter of the suit. However, she is not made party before the Trial Court or the Appellate Court. Therefore, she seeks intervention in the second appeal.
4. It is trite that if any decree is passed without adding necessary party, such party is not bound by the decree passed behind his or her back. If the applicant has any right over the suit property, she has her independent remedy to claim the relief pertaining to such property by resorting to appropriate mode permissible under the law. However, when she is neither added as party, nor she was party before the District Court in appeal, application for intervention cannot be entertained. Hence, the application is rejected with liberty in favour of the applicant to take out the appropriate remedy as permissible under law.
5. Post the appeal for further consideration on 31/08/2023.
6. Interim relief granted in appeal to continue till then.

[S. G. CHAPALGAONKAR]
JUDGE