

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

WRIT PETITION NO. 14119 OF 2023

NATHABAI VISHWNATH SALUNKE AND ANOTHER
VERSUS
KADU LAHANI KOLI THROUGH LR's

...
Advocate for Petitioner : Mr. A.I.Deshmukh
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 07th NOVEMBER, 2023

PER COURT :

1. Heard learned counsel for the petitioner.
2. The petitioner is the original defendant who is challenging order dated 28.08.2023 passed below Exh-78 & 80 in RCS No. 258/2015, thereby refusing the prayers of adding party and staying execution.
3. The petitioners are real sisters of the respondent No.2/Vilas. The respondent No.1 had executed an agreement of sale for transferring the suit land to the father of the petitioners. The respondent No.1 had filed suit for declaration and possession against respondent No. 2 bearing RCS No. 534 of 2001. It was decreed and the decree was confirmed upto the Apex Court.
4. The petitioners have filed RCS No.242 of 2022 for specific performance of contract, possession and injunction on the basis of same agreement of sale against the illegal heirs of the respondent No.

1. The application for temporary injunction at Exhibit-5 is rejected. The suit is pending.

5. In view of the pendency of the suit stated above, the petitioners attempted an intervention in Regular Darkhast No. 258 of 2015 filed by the respondent No. 1. It is contended that the decree passed in earlier suit instituted by the respondent No. 1 is not binding and being co-owners they are interested in the suit land. Therefore, application Exh-78 is submitted for impleading them in the Regular Darkhast No. 258 of 2015. Another application is presented raising objection under Order 21 Rule 97,99 and 101. Both the applications are contested by the respondent No. 1 stating that these are the proxy attempts to deprive the fruits of the decree.

6. Learned counsel for the petitioner submits that his client do not have any remedy than to intervene in the execution vide application Exh-75,78 and 80. He would submit that if the sale deed is issued in favour of the respondent No. 1, irreparable loss would be caused and their suit would become infructuous. The learned counsel further submits that the impugned order is perverse and liable to be quashed.

7. The learned Judge has rightly rejected application Exh-72 and 78 because the provisions of Order 1 Rule 10 can not be made applicable to the execution. It is rightly recorded that deceased father of the petitioner till his lifetime did not take any steps to get sale deed executed on the basis of the agreement. The claim of the specific

performance of contract has not been made by the respondent No. 2 in RCS No. 534 of 2001.

8. The petitioners are not necessary party and can not agitate their alleged right or interest for the first time in the execution. Pertinently, their application for temporary injunction filed in RCS No. 242 of 2022 has been rejected. The petitioners are not in possession of the suit property.

9. I do not find any perversity or patent illegality in the impugned order. Learned executing court has rightly rejected the applications of the petitioners. The Writ Petition is therefore dismissed.

[SHAILESH P. BRAHME, J.]

spc/