

Ghuge

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

FIRST APPEAL NO.2021 OF 2011

Kesubhai Babubhai Patel and Ors ... Appellants

V/s.

Babubhai Merwanbhai Patel (Since
Deceased) Through Legal Heirs Zabhli
Babubhai Patel and Ors ... Respondents

**WITH
INTERIM APPLICATION NO.20226 OF 2022
IN
FIRST APPEAL NO.2021 OF 2011**

Kamlesh Jethmal Shah ... Applicant

In the matter of :

Kesubhai Babubhai Patel and Ors ... Appellants

V/s.

Babubhai Merwanbhai Patel (Since
Deceased) Through Legal Heirs Zabhli
Babubhai Patel and Ors ... Respondents

**WITH
INTERIM APPLICATION STAMP NO.8886 OF 2021
IN
FIRST APPEAL NO.2021 OF 2011**

Ranchhod Merwanbhai Patel ... Applicant

In the matter of :

Kesubhai Babubhai Patel and Ors ... Appellants

V/s.

Babubhai Merwanbhai Patel (Since
Deceased) Through Legal Heirs Zabhli
Babubhai Patel and Ors ... Respondents

**WITH
CIVIL APPLICATION NO.1782 OF 2018
WITH**

**CIVIL APPLICATION NO.4177 OF 2018
IN
FIRST APPEAL NO.2021 OF 2011**

Kesubhai Babubhai Patel and Ors	... Applicants
V/s.	
Babubhai Merwanbhai Patel (Since Deceased) Through Legal Heirs Zabkli Babubhai Patel and Ors	... Respondents

Mr. Mandar Soman a/w Hardik Jain for the Intervenor.

Mr. G.R. Agrawal a/w M.S. Naina P. Boraste for the appellant.

Ms. Reshma Nair i/b Devmani Shukla for the respondent in FA/2021/2011.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 7, 2023

P.C.:

INTERIM APPLICATION NO.20226 OF 2022

1. The applicants have filed Interim Application for intervention seeking direction against the appellant to add them as respondent being necessary party. The suit was filed by the original appellant seeking relief of declaration that the defendant are not entitled to have any right, title and interest in the suit property and the plaintiffs are the only the legal heirs of deceased Babubhai Merwanbhai Patel to succeed to the suit property is sought. By the impugned Judgment and Decree, said suit has been dismissed. The original plaintiffs has, therefore, filed present appeal.

2. The appellant claims right on the basis of agreement to sale dated 7th June, 2007 and deed for right of way dated 13th June,

2007. According to the applicants, respondent Nos.1 and 2 have admitted that the applicants are the purchasers of suit property.

3. The present Interim Application is filed purportedly under Order I Rule 10 of the Code of Civil Procedure, 1908. Such application can be allowed only if, the applicant satisfies that he is a necessary party to the suit. Applicant claims to be owner on the basis of agreement to sell. It is well settled that agreement to sell does not confer title on a person nor admission by a party would confer ownership. The applicant may have independent remedies to enforce agreement to sell and agreement for right of way, by instituting appropriate proceedings. However, insofar as the present appeal is concerned appellants are not necessary party. Therefore, such application cannot be entertained.

4. Therefore, the Interim Application stands rejected.

5. List the First Appeal on **14th February, 2023.**

(AMIT BORKAR, J.)