

SA Pathan

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

WRIT PETITION NO.15047 OF 2022

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Shamkant Narayan Satav & Ors

... Petitioners

V/s.

Amit Sudam Bhapkar & Ors

... Respondents

Mr. Ashok B Tajane a/w. Mrs. Kavita P Shinde, for
petitioners.

Mr. Vaibhav B. Satam i/by Ms. Vedangi V. Satam, for
respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 3, 2023

P.C.:

1. The petitioners (original defendants) are challenging orders dated 26 February 2020 passed below Exhibit 47 and 7 September 2022 passed below Exhibit 57.
2. The respondent Nos.1 to 3 are the original defendants who filed Regular Civil Suit No.46 of 2012 seeking declaration that the agreement to sale executed by their predecessors deserves to be cancelled.
3. In the said suit, the defendants had filed counter claim seeking specific performance of agreement to sale dated 25 April 2018.

4. On 4 November 2017, the Trial Court framed issues.
5. The petitioners had filed an application below Exhibit 47 to add third party purchasers as their addition as plaintiffs to the Special Civil Suit no.46 of 2012.
6. The Trial Court rejected the said application.
7. In so far as the validity of order below Exhibit 47 is concerned, the defendants have no right to seek such application to add third party purchasers as co-plaintiffs particularly when existing plaintiffs are objecting for their addition as plaintiffs. Therefore, no fault can be found with the order dated 26 February 2020.
8. However, it appears that defendants have filed an application to add third party purchaser as opponents to the counter claim. The application is based on the transfer of suit property by original plaintiffs in favour of third party purchaser. The Trial Court rejected such application on the ground that defendants have not disclosed in the application from where they got knowledge of the sale deed executed by the plaintiffs. It is also rejected on the ground that on the date of filing of counter claim defendants were having knowledge of sale deed. The trial is already commenced and defendants have delivered their defence; therefore, according to the Trial Court such amendment in counter claim is belated.
9. Having heard, learned Advocate for the parties. In my opinion, defendants intend to add purchasers as opponents to his counter claim. The counter claim has status of independent suit. Once, defendants have been successful in showing that plaintiffs

(opponents to the counter claim) has created third party rights, the issue will be covered by the judgment in the case of **Kasturi Versus Uyyamperumal & Ors**, reported in (2005) 6 SCC 733. The third party purchasers being transferee from the vendor, they need to be added as parties to the counter claim as without their presence no effective decree in a suit for specific performance can be passed. Hence, following order is passed:

- a) The impugned order dated 7 September 2022 passed by the 3rd Joint Civil Judge, Senior Division, Baramati in Special Civil Suit No.46 of 2012 is quashed and set aside.
- b) The application below Exhibit 57 in Special Civil Suit No.46 of 2012 is stands allowed.

10. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)