

AGK

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

WRIT PETITION NO.2658 OF 2023

Madhukar Ramchandra Sodak & Anr. ... Petitioners

V/s.

Deepak Rajaram Dhamane & Ors. ... Respondents

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Mr. Narayan G. Rokade for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

P.C.:

1. The challenge in this writ petition under Article 227 of the Constitution of India is to the order of rejection of an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 ("CPC" for short) in an appeal dismissing suit for declaration of ownership and for possession of half share.

2. The petitioner claims to be impleaded in the appeal based on agreement to sell in relation to which he has already filed a suit for specific performance. The Appellate Court rejected the application relying on the judgment of a learned Single Judge of this Court in **Jagannath Khanderao Kedar & Ors v. Gopinath Bhimaji Kedear & Ors.** reported in 2022 (4) ABR 551.

3. On perusal of the impugned order, it appears that the right claimed by the petitioner to implead himself in an appeal against

dismissal of the suit is based on agreement to sell. The agreement to sell does not create interest in the property. The person claiming his right based on agreement to sell is not a necessary party in a suit for declaration of ownership and for delivery of half share of the suit property. If the petitioner succeeds in his suit, equities in relation to suit property will be adjusted by the executing Court causing no prejudice to the petitioner.

4. The impugned order does not suffer from any jurisdictional error. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)