

Age 57 years, Occ. Business

- 4) Sandip Navalkishor Kothari
Age-54 yrs, Occ. Business, Res. No.1 to 4,
R/o. Gaurakshan Rd. Akola, Th. & Dist.
Akola.
- 5) Vijaykumar Shrivishnuji Toshniwal, age-
54 Yrs. Occ. Business R/o. Behind Dental
College, Akola, Th. & Dist. Akola.
- 6) Through its Regional Manager,
Amravati Housing & Area Development
Authority, Gruhnirman Bhavan, Tope
Nagar, Amravati, Th. & Dist. Amravati.

... Respondent(s)

Shri R.L. Khapre, Senior Advocate a/b Shri N.R. Saboo & Shri Narendra
Dhoot, Advocates for the Petitioners
Shri S.V. Manohar, Senior Advocate a/b Shri Sarda & Zeeshan Haq, Advocates
for the respondent Nos.2 to 5

CORAM : ANIL S. KILOR, J.
DATED : 03rd April 2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.
3. The present writ petition takes an exception to the order
below Exh.1 dated 08.12.2021 in Regular Civil Appeal No.14 of

2018, passed by the District Judge-IV, Akola, observing that the applications Exhs.13, 14, 16 and 17 shall be heard and decided along with final hearing and decision of the main appeal.

4. Exh. 13 is for amendment, filed under Order VI Rule 17 read with Section 151 of the Civil Procedure Code (CPC). Exh. 14 is filed under Order XXXI Rule 27 read with Section 151 of the CPC for permission to file documents on record. Exhs. 16 and 17 are the applications filed for addition of parties under Order I Rule 10 of the CPC.

5. It is the case of the petitioners/Original plaintiffs that they preferred Special Civil Suit No.14 of 2009, seeking decree for specific performance of contract. The learned trial Court partly decreed the suit and granted refund of earnest amount along with interest.

6. The respondents/Original Defendants feeling aggrieved by the same, filed an appeal, namely, RCA No.14 of 2018. Thereafter, the petitioners filed cross appeal, claiming specific performance of contract. During the pendency of appeal on 26.11.2019, the

respondent No.6 placed respondent Nos.1 to 4 in possession and therefore, the applications Exhs.16 and 17 came to be filed for addition of parties and applications Exhs.13 and 14 were filed to bring subsequent events on record and to file documents on record, respectively.

7. The learned First Appellate Court, vide impugned order has held that the said applications shall be heard and decided along with final hearing and decision of the main appeal. Hence, this petition.

8. I have heard Shri Khapre, learned Senior Advocate for the petitioner and Shri Manohar, learned Senior Advocate for the respondent Nos.2 to 4.

9. It is a settled law that the application under Order XXXXI Rule 27 of the CPC is to be considered at the time of hearing of appeal on merit so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved.

10. The Hon'ble Supreme Court of India, in the case of ***Union of India Vs. Ibrahim Uddin and Another***¹, while reiterating the law as regards Order XXXXI Rule 27 of the CPC, has held thus:

“52. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

11. Thus, I do not find any error committed by the learned First Appellate Court while observing that the application Exh. 14, shall be heard with appeal.

12. As far as the applications Exh.16 and 17 are concerned, the same are filed under Order I Rule 10 of the CPC for addition of parties, thereby, the petitioners want to add subsequent purchasers as party.

¹ (2012) 8 SCC 148

13. In recent the judgment of the Hon'ble Supreme Court of India, in the case of *Shivshankara & Anr. versus H.P. Vedavyasa Char*², it is held thus:

“16. To fortify our view, we will consider certain other aspects as well. In the wake of the above-mentioned admission by DW-1, the attempt to bring in new plea by amending the written statement that the second defendant (the deceased second appellant) had purchased the suit schedule property as per Exhibit D-2, sale deed dated 05.10.2000 has to be seen. Since admittedly and indisputably the suit from which the appeal arises was one based on possessory title, the legality of Exhibit D-2 sale deed need not be gone into in this appeal and rightly has not been gone into by the High Court. Evidently, the High Court declined to act upon the same, in the light of the doctrine of lis pendens. Even if it is taken for granted that the provisions under [Section 52](#) of the Transfer of Property Act are not applicable as such in the case on hand it cannot be disputed that the principle contained in the provision is applicable in the case on hand. It is a well-nigh settled position that wherever [TP Act](#) is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like Court sale etc. Transfer of possession pendente lite will also be transfer of property within the meaning of [Section 52](#) and, therefore, the import of [Section 52](#) of the TP Act is that if there is any transfer of right in immovable property during the pendency of a suit such transfer will be non est in the eye of law if it will adversely affect the interest of the other party to the suit in the property concerned. We may hasten to add that the effect of [Section 52](#) is that the right of the successful party in the litigation in regard to that property would not be affected by the alienation, but it does not mean that as against the transferor the transaction is invalid. In the

2 In Civil Appeal No.10215 of 2011, dated March 29, 2023

decision in Thomson Press (India) Ltd. v. Nanak Builders and Investors Private Limited (2013) 5 SCC 397, this Court held the provision of Section 52 of the Transfer of Property Act, 1882, did not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. There can be no doubt with respect to the position that the prohibition by application of the principles of the said doctrine would take its effect with the institution of the suit. Be that as it may, we have no hesitation to hold that the High Court was perfectly justified in the circumstances, to come to the conclusion, while considering the application for amendment of the written statement filed at the appellate stage, that granting the same would have, in effect, necessitated framing of fresh issues and constrained the parties to agitate their rights as if in a de novo trial. We referred to the aforesaid aspects solely to drive home the point that since the subject suit is based only on possessory title viz., on the basis of prior possession the finding and consequential rejection of the prayer for amendment of written statement to bring in the plea of purchase of the property pending the suit by the deceased second appellant cannot be said to be ground resulting in grave injustice.”

14. Considering the above referred observations of the Hon’ble Supreme Court of India, I do not find any error committed by the trial Court in passing the impugned order as regards the applications Exhs.16 and 17.

15. As far as application Exh.13 is concerned, again by this application, the petitioners want to bring on record the facts in relation to the subsequent events i.e. creation of interest in favour

of third party during the pendency of the appeal. Thus, considering the law laid down by the Hon'ble Supreme Court of India in the case of ***Shivshankara & Anr.*** (supra), no prejudice would be caused to the petitioners, if the said application is heard and decided along with the main appeal.

16. In the circumstances, I do not find any merit in the present writ petition, accordingly, it is **dismissed**.

17. The learned District Judge-IV, Akola is directed to expedite the RCA No.14 of 2018.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]