

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1125 OF 2023

Gajanan Tukaram Navghare and ors__ Vs. __Bicchu Harba Uke and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.F.Bhagwani, Advocate for petitioners

CORAM : AVINASH G. GHAROTE, J.
DATE : 28/03/2023

1] Heard Mr. Bhagwani, learned counsel for the petitioners. None appears for the respondents, though served.

2] The petition challenges the order dated 23.1.2023 passed by the learned Appellant Court (pg.23) whereby the application filed by the present petitioners to implead the transferees through the respondents under the sale deed dated 14.9.2022, as respondents, has been rejected on the ground that the transferees were bound by the principle of '*lis pendence*' and therefore, were not necessary parties.

3] Mr. Bhagwani, learned counsel for the appellant places reliance upon Order 22 Rule 10 of C.P.C. to contend that the interest of the respondents has now devolved upon the persons proposed to be added by virtue of the sale deed dated 14.9.2022, they would be necessary to be impleaded.

4] In **Dhurandhar Prasad Singh vrs. Jai Prakash University and ors**, (2001) 6 SCC 534, while considering the provisions of Order 22 Rule 10 of C.P.C., it has been held that where there is a devolution of interest during the pendency of the proceedings, the persons who have acquired the interest in the subject matter of the litigation by assignment or otherwise, have a right to apply to the Court for leave to continue the proceedings. It has also been held that it does not follow that it is obligatory upon them to do so.

5] In the instant case, the impugned order reflects that the sale deed dated 14.9.2022 transferring the interest in the suit property to one Ajay Babulal Khandelwal was during the pendency of the appeal, considering which the sale deed dated 14.9.2022 would be one which would be clearly hit by the principle of '*lis pendence*' and the purchaser therefore would be bound by the judgment of the Appellate Court. The learned Appellate Court is correct in holding that in a suit for specific performance, the only necessary parties are parties to the agreement and none else. Since the subsequent transferee was not a party to the agreement in question, any subsequent transfer of title during the pendency of the appeal would not make him a proper or necessary party. This is not a case where the purchaser is seeking himself to be impleaded, considering which it is apparent that he has chosen to abide by the result in the

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appeal, as he merely steps into the shoes of the respondent and does not acquire any independent right whatsoever. That being the position, I see no reason to interfere in the impugned order. The petition is dismissed. No costs.

JUDGE

Rvjalit