



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

44 WRIT PETITION NO. 9628 OF 2023

SAKHARAM RAMCHANDRA THOMBARE THROUGH G. P. A. BHAGINATH  
SAKHARAM THOMBARE  
VERSUS  
JANABAI PANDURANG THOMBARE DIED ASARABAI TRIMBAK WALKE AND  
OTHERS

Mr. M. K. Deshpande, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 18<sup>th</sup> NOVEMBER, 2024

PER COURT :-

1. All respondents are served with the notice. Order dated 4<sup>th</sup> August 2023 indicates that notice was issued for final disposal. Absence of the respondents indicates that respondents are not interested in opposing the petition.

2. Petitioner is the original plaintiff in R.C.S. No. 17 of 1996. The said suit was filed for specific performance of contract. The suit came to be dismissed by the learned Trial Court by judgment and order dated 14<sup>th</sup> October, 2010. Against the said judgment and decree appeal bearing R.C.A. No. 50/2012 (old No. 284 of 2010) came to be filed before the District Court, Aurangabad. During the pendency of this appeal an application Exhibit 47 came to be moved by respondent nos. 2 to 5 to join them as party respondents to the appeal. It is their contention that

they had purchased the suit land from original defendant no.1 Janabai on 28<sup>th</sup> November, 2014.

3. Learned counsel for the petitioner submits that the Trial Court has committed error in joining the purchaser as a party, when it is settled position of law that in case of transfer of the subject property pendente lite, the decree passed against the vendor is binding upon the purchaser.

4. Perusal of the application Exhibit 47 indicates that during the pendency of first appeal before the District Court, the original respondents defendants has transferred the subject property in favour of respondent nos.2 to 5. It is no ones case that the instant suit is collusive one. Ordinarily, decree passed in the suit binds parties thereto, however in view of Section 52 of Transfer of Property Act, needless to say that appeal in continuation of suit and restrictions to transfer of property would also apply during pendency of appeal also. Thus, the purchaser who purchases a suit property during pendency of suit, which is not collusive, he is bound by the decree that may be made against the person from whom he derives title. This Court therefore finds substance in the contention of the learned counsel for the petitioner that in case of transfer pendente lite the decree passed against the original defendants/ vendors would be binding upon the purchaser. Moreover their presence is

not necessary for effective decision of appeal. In such circumstances, they are neither proper or necessary party to the present appeal. Their presence in the appeal in no way would assist the learned first appellate Court in deciding the suit for specific performance of contract.

5. In the light of above discussion, impugned order cannot sustain. Hence, petition stands allowed in terms of prayer clause 'C'. Application Exhibit 47 filed before Trial Court in R.C.A. 50/2012 stands dismissed. No order as to costs.

(R. M. JOSHI, J.)

ssp