



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 14124 OF 2017

KHANDELWAL VIKAS MANCH AURANGABAD, THROUGH M K DUSAD  
(KHANDELWAL)

**VERSUS**

NIYAMATBEE SHAIKH DADA AND OTHERS

Mr. R. K. Kahndelwal, Advocate for the petitioner

Mr. K. D. Jadhav a/w Mr. V. L. Bhange, Advocate for respondent No.1.

**CORAM : R. M. JOSHI, J.**

**DATE : 24<sup>th</sup> JULY, 2024**

**PER COURT :-**

1. By consent of both sides, heard finally.
  
2. Petitioner is not party defendant to R.C.S. No. 1063/1993. which came to be decreed on 16/10/2006. The plaintiff claims to be the subsequent purchaser of the portion of the suit property involved in this suit. According to the petitioner claims position of title in the portion of the suit property on the basis of sale deed dated 31/12/1996. Undisputedly, the said sale deed has been executed during the pendency of the suit. The bar of lis pendens therefore would apply to the present case. Though the transaction by itself would not become invalid, however, the said transaction is subject to the outcome of the suit. Needless to say that the petitioner also is bound by the said decree

passed in the R.C.S. No. 1063/1993.

3. Admittedly, the petitioner has filed Special Civil Suit No. 215/2010 before CJSD, Aurangabad for declaration that the judgment and decree passed in R.C.S. No. 1063/1993 dated 16/10/2006 is illegal and null and void. The petitioner having taken out substantive proceedings for seeking such declaration, question of he being permitted to join a respondent in the RCA bearing No. 13/2008 does not arise. The predecessor in title of the petitioner is the appellant in the said appeal. Hence, there is no reason or justification to join the petitioner as a party to the said appeal.

4. Learned First Appellate court has taken into consideration on this material aspect including the factum of filing of the substantive suit against the judgment and decree passed in R.C.S. No. 1063/1993. Merely because petitioner is a Trust it cannot be permitted to join as a party unless any right exists in the petitioner to that effect. Hence, this Court finds no reason to cause any interference in the impugned order. Petition stands dismissed.

**(R. M. JOSHI, J.)**

ssp