

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7353 OF 2022

1. **Balaso Vitthal Solge**  
Age : 42 Years, Occupation : Business &  
Agriculturist, Residing at : 3/197, Shelke  
Galli, Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur.
2. **Smt.Radha Vitthal Solge**  
Age : 65 Years, Occupation : Household,  
Residing at : 3/197, Shelke Galli,  
Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur.
3. **Sou.Shasikala Nandkumar Wadikar**  
Age : 46 Years, Occupation : Household,  
Residing at : 3/197, Shelke Galli,  
Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur.
4. **Sou.Shobha Deepak Surve**  
Age : 38 Years, Occupation : Household,  
Residing at : 3/197, Shelke Galli,  
Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur.
5. **Sou.Seema Raju Pujari**  
Age : 35 Years, Occupation : Household,  
Residing at : 3/197, Shelke Galli,  
Ichalkaranji, Taluka : Hatkanangale, ...Petitioners  
District : Kolhapur. (Original Defendant Nos.1 to 5)

**Versus**

1. **Dinesh Shantilal Jain**  
Age : 52 Years, Occupation : Business,  
Residing at : 10/110, Vivekanand Colony,  
Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur. ...Original Plaintiff

2. **Sachin Shripal Hukkire**  
Age : 45 Years, Occupation : Business,  
Residing at : 3/711, Zenda Chowk,  
Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur. **...Original Defendant No.6**
3. **Rajwardhan Sambhajirao Naik**  
Age : 29 Years, Occupation : Agriculturist,  
Residing at : 2/200, Ichalkaranji, Taluka :  
Hatkanangale, District : Kolhapur. **...Original Defendant No.7**
4. **Mallikarjun Shabu Patharvat**  
Age : 40 Years, Occupation : Agriculturist &  
Business, Residing at : Site No.102,  
Aasara Nagar, Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur. **...Original Defendant No.8**
5. **Vinayak Balkrushna Powale**  
Age : 32 Years, Occupation : Business,  
Residing at : 14/251/1, Tarai Niwas,  
Tambe Mala, Ichalkaranji, Taluka : Hatkanangale,  
District : Kolhapur. **...Original Defendant No.9**
6. **Manibhadra Developers**  
Through Partner : Yashwant Maganlal  
Rathore, Age : 49 Years, Occupation :  
Business, Residing at : 11/474, Kamal Laxmi,  
Near Mahesh Club, Ichalkaranji, **..Original Defendant No.9**  
Taluka : Ichalkaranji, District : Kolhapur. **(Respondents)**

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|----------------------------------------------------------------------|----------------------------------|
| Mr.Manoj A.Patil a/w<br>Mr.Shubham Dhenge, Mr.Akash<br>M. Murudkar:- | Advocates for Petitioners.       |
| Mr.Ishaan Kapse:-                                                    | Advocate for Respondent Nos.4-6. |

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CORAM : S. M. MODAK, J.

DATE : 23<sup>rd</sup> OCTOBER 2024

**P. C. :-**

1. Heard learned Advocate for Petitioners–Defendant Nos.1 to 5 and learned Advocate for Respondent Nos.4, 5 and 6–Defendant Nos.8, 9 and 10. The Respondent No.1 – Plaintiff is duly served of this Petition but he has not appeared. The Defendant Nos.7 and 8 to 10 are permitted to incorporate their stand in the evidence Affidavit.

2. Originally, there was a Suit only against the present Petitioners–Defendant Nos.1 to 5 and Defendant No.6. It was the Suit for Specific Performance on the basis of an agreement which was executed by the father of these Petitioners. These Petitioners have executed a sale-deed with the Defendant No.6. It is challenged in Special Civil Suit No.108 of 2008.

3. During pendency of that Suit, there were two more transactions.

They are as follows:-

(a) Defendant No.6 has sold the Suit property to Defendant No.7.

(b) Defendant No.7 has sold it to Defendant Nos.8, 9 and 10.

4. The trial Court allowed the Plaintiff to bring on record the subsequent transaction by way of amendment in the Plaint. All the subsequent purchasers have also appeared before the trial Court and filed Written Statement. The issues are framed and even the Plaintiff

gave evidence. At this stage, Defendant Nos.1 to 5 moved an Application for amendment in their Written Statement. It was filed on **17<sup>th</sup> February 2021**. This Application is filed on the basis of following documents:-

- (a) Dated **15<sup>th</sup> July 2019** executed by Defendant No.7–Rajvardhan in favour of Defendant No.1–Balaso thereby accepting the entire responsibility.
- (b) There is a registered Deed of Confirmation dated **8<sup>th</sup> October 2020** executed by Defendant Nos.8,9 and 10 in favour of Defendant No.1 also thereby accepting the entire responsibility.

5. The amendment was opposed by the Plaintiff, so also, by other Defendants. The trial Court as per the impugned order dated 10<sup>th</sup> February 2022 rejected the said amendment. Predominantly, it is for the following reasons:-

- (a) It will expand the scope of an inquiry in the Suit.
- (b) Amendment was sought after the trial has begun.
- (c) These documents deal with the transaction in between the Defendant Nos.1 to 5 on one hand and Defendant No.7 and Defendant Nos.8 to 10 on the other hand.
- (d) The Plaintiff is not connected to the transactions in between the Defendants *inter se*.

6. Mr.Patil relied upon the observations in following judgments:-

- (a) *Sushil Kumar Jain V/s. Manoj Kumar and Another*<sup>1</sup>
- (b) *Baldev Singh and Others V/s. Manohar Singh and Another*<sup>2</sup>
- (c) *Revajectu Builders and Developers V/s. Narayanswamy and Sons and Others*<sup>3</sup>
- (d) *Usha Balasaheb Swami and Others V/s. Kiran Appaso Swami and Others*<sup>4</sup>
- (e) *State of Bihar and Others V/s. Modern Tent House and Another*<sup>5</sup>

7. According to him, the parameters for dealing with an amendment Application in Complaint are different from the parameters for dealing with an Application for amendment in the Written Statement. No doubt, both the parameters are different. Admittedly, this Application is filed post commencement of the trial. The Court has to see whether these Petitioners were diligent in seeking the amendment. The relevant amendments in the Complaint are made on the following dates:-

- (a) The name of Defendant No.7 is added on 20<sup>th</sup> December 2014.
- (b) The names of Defendant Nos.8 to 10 were added on 14<sup>th</sup> January 2019.

Admittedly, in those transactions, these Petitioners were not the parties.

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1 (2009) 14 Supreme Court Cases 38

2 (2006) 6 Supreme Court Cases 498

3 (2009) 10 Supreme Court Cases 84

4 (2007) 5 Supreme Court Cases 602

5 (2017) 8 Supreme Court Cases 567

According to them, the cause of action for filing the amendment Application is those two days on which, the Defendant No.7 and Defendant Nos.8 to 10 have executed those documents. They are:-

- (i) 15<sup>th</sup> July 2019 by Defendant No.7 and
- (ii) 8<sup>th</sup> October 2020 by Defendant Nos.8 to 10.

It is true that the Petitioners ought to have sought for the amendment on 17<sup>th</sup> February 2021 immediately after execution of these agreements. They have pleaded about the reason of Covid in their Application. No one can deny it.

8. I am inclined to allow the amendment. It is for the reason that it cannot be said that this amendment is sought after prolonged delay from the date of execution of these documents. Secondly, the Plaintiff has sought for cancellation of all the subsequent transactions by way of amendment. It is also true that there is a relief sought against these Petitioners about refund of Rs.6,99,750/- (Rupees Six Lakh Ninety Nine Thousand Seven Hundred Fifty) which was paid in excess of the consideration along with the interest.

9. There is also direction sought against these Petitioners for execution of sale-deed. Admittedly, subsequent sale-deeds are going to come in the way. So, certainly the execution of subsequent sale-deed is

subject matter of inquiry before the trial Court. If, the subsequent purchasers have entered into some arrangement with these Petitioners, the Petitioners ought to be given permission to place them on record by way of amendment. This Court feels that scope of the Specific Performance Suit is not widened because subsequent sale-deeds is a matter of inquiry before the trial Court. So, on all counts, I am inclined to allow the amendment. At the same time, Defendant No.7 and Defendant Nos.8 to 10 (who are one set of party to those documents also need to be given permission to plead their version about those documents. I do not subscribe to the view taken by the trial Court while rejecting the amendment.

10. The Plaintiff needs to be compensated with cost. At the same time, he may file additional evidence. In view of that, following order is passed:-

### **ORDER**

- (i) The **Writ Petition is allowed.**
- (ii) The order dated 10<sup>th</sup> February 2022 passed by the Court of Civil Judge Senior Division – Ichalkaranji thereby rejecting the amendment in the Written Statement is set aside.
- (iii) The **Application of the Defendant Nos.1 to 5 for carrying**

out the amendment in the Written Statement as prayed in the Application, is allowed.

- (iv) Let, this amendment be carried out within three (3) weeks from the date of this order.
  - (v) These Petitioners to pay cost of Rs.10,000/- (Rupees Ten Thousand) to the Original Plaintiff.
  - (vi) The Plaintiff is permitted to file an Additional Affidavit, if he wants in view of the above development.
  - (vii) Even, the Defendant No.7 and Defendant Nos.8 to 10 are permitted to file additional Written Statement.
  - (viii) The trial Court is at liberty to recast the issues if required.
11. In view of the above, **Writ Petition is disposed of.**

[S. M. MODAK, J.]