



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4538 OF 2024

SANJIVAN BABASAHEB KAKDE
VERSUS
KHUSHAL BABASAHEB KAKDE AND OTHERS

...
Advocate for the Petitioner : Mr. A. V. Hon
Advocate for Respondent No. 1 : Mr. C. T. Jadhav
Advocate for Respondents No. 2 to 5 : Mr. D. B. Rasve
...

CORAM : ROHIT W. JOSHI, J.

Dated : July 2, 2025

PER COURT :-

1. The defendant No. 2 in Regular Civil Suit No. 280 of 2019 pending before the learned 2nd Jt. Civil Judge Junior Division, Gangapur, had filed a suit for addition of one Santosh Macchindra Kakade as party to the said suit. The said suit is filed for partition and separate possession. The proposed defendant Santosh Macchindra Kakade has purchased a portion of one of the suit property after filing of the suit according to the petitioner / defendant No. 2.

2. The learned counsel for the petitioner states that since the suit is filed for partition, all the parties have the status of plaintiff as well as the defendant. He contends that the subsequent purchaser

of the suit property will be a necessary party in the suit for partition. Since the transfer is a *lis pendens* transfer, the transferee will be bound by the decree to be passed in the suit. Assuming that the transferee is not aware, even then, he will be bound by the final outcome of the suit. The property which is alienated will obviously form a part of the properties which shall be put to partition in the event, the suit for partition is decreed. In that view of the matter, the rights of the petitioner / defendant No. 2 will not be adversely affected.

3. In view of the settled legal position with respect to Section 52 of the Transfer of Property Act as also the doctrine of lis pendence, this Court finds not reason to interfere with the impugned order since the rights of the petitioner / defendant No. 2 are adequately protected.

4. Mr. Hon, the learned counsel for the petitioner places reliance on the judgment of this Court in the matter of **Yogesh S/o Balaji Misar Vs. Keshav Vistari Sontakke and Ors. [2014(5) Mh. L. J. 53]**. In the said matter, the *lis pendens* transferee had filed an application for joining his name as plaintiff in the suit since he had purchased the property from the plaintiff after filing of the suit. The

ratio of the said judgment will not be applicable since the transferee has not moved the application for joinder.

5. Therefore, the impugned order does not warrant any interference. The petition stands **dismissed**.

6. Needless to mention that the sale transaction is subject to the outcome of the suit.

(ROHIT W. JOSHI, J.)

Omkar Joshi