



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 6538 OF 2022

BALU NIVRUTTI KHEDKAR
VERSUS
BAYADABAI NEHRU KAKADE AND OTHERS

Mr. V. S. Bedre, Advocate for the petitioner
Mr. S. V. Suryawanshi, Advocate for respondent no.2
Mr. V. R. Dhorde, Advocate for respondent no.3.

CORAM : R. M. JOSHI, J.

DATE : 28th JANUARY, 2025

PER COURT :-

1. The petitioner is the purchaser of the subject property after decree was passed by the Trial Court in R.C.S. No. 137 of 1997 which was filed by the plaintiff for seeking decree of partition. The decree is passed on 31/12/2002 and thereafter execution proceeding is initiated by the plaintiff for execution thereof. It is thereafter an appeal is sought to be filed by defendant no.1 in the original suit. With application for condonation of delay. In this application for delay condonation present petitioner is seeking his impleadment as an applicant.

2. Learned counsel for the petitioner has drawn attention of the Court to the judgment in case of *Siddhi Promoters Vs. Anita Krishnarao Shirolkar @ Janaki Vikas Morey and others, 2018(3) Mh.L.J., 595.*

3. There cannot be any dispute about the proposition of law that the discretion of the Court to permit the transferee pendente lite to be

added the party or not. The Hon'ble Supreme Court in case of ***Amit Kumar Shaw and Anr. Vs. Farida Khatoon and Anr., 2005(3) Mh.L.J. (SC) 330*** has held that the transferee pendente lite is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. It is further held that the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. Herein this case the suit was for the partition. Admittedly, at the relevant time there was no sale deed executed by defendant no.1 in favour of present petitioner. The question of petitioner being interested in the suit for partition then filed does not arise.

4. Learned Trial Court has also held that it is the defendant to the suit who is seeking condonation of delay and trying to establish the reason therefor and therefore the petitioner cannot be permitted to make an application to join himself as an applicant and to take over the challenge sought to be made out by the defendant no.1 to the decree passed by Trial Court. In the facts of the case and having regard to the judgment of the Hon'ble Supreme Court in case of ***Amit Kumar Shaw and Anr.*** (cited supra) Court finds no reason to cause interference in the impugned order. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp