

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14318 OF 2024

M/s. S. C. Enterprises & Ors.	}	Petitioners
versus		
Bashiroddin Papamiya Baghvan,	}	
since deceased, through LRs. (1a)	}	
Julekha Bashiroddin Baghvan & Ors.	}	Respondents

Dr. Abhinav D. Chandrachud i/b. Mr. Narayan G. Rokade, Mr. Siddharth Ghodke, Mr. Abhang Suryawanshi and Mr. Ramchandra Wagh for petitioners.

Mr. Vaibhav D. Kadam with Ms. Pooja Nikam, Mr. Shrinath Badade, Mr. Aditya A. Thorat, Ms. Shweta Jadhav and Ms. Vedika Bhoir for respondents 15 to 18.

CORAM: ALOK ARADHE, C. J.

DATE: JULY 14, 2025

ORAL ORDER:

1. This petition under Article 227 of the Constitution of India has been filed by the petitioners/plaintiffs against the order dated 6th September 2024, by which, the Trial Court has allowed the application for impleadment preferred by respondents 15 to 18, which are *lis pendens* transferees.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the plaintiffs/respondents 1 to 3 filed a suit being RCS No. 427 of 2007 on 31st October 2007 seeking relief of partition in respect of Survey No. 98/6/2 admeasuring 60 R situated at Nashik. In the aforesaid civil suit, issues were framed on 15th October 2008 and 17th November 2008. During the pendency of

the suit, on 2nd April 2024, respondents 1 to 3/plaintiffs transferred their share in the property to respondents 15 to 18. Thereupon, respondents 15 to 18, on 19th June 2024, filed an application seeking their impleadment in the suit. The Trial Court, vide order dated 6th September 2024, has allowed the application for impleadment. Hence this petition.

3. Learned counsel for the petitioners submitted that the Trial Court ought to have appreciated that the suit was instituted in the year 2007, whereas the application for impleadment was filed in the year 2024. It is further submitted that the plaintiffs transferred the property without seeking leave of the Court under section 52 of the Transfer of Property Act, 1882. Therefore, the transferee *pendente lite* could not have been impleaded as party respondents under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC).

4. In support of the aforesaid submission, learned counsel for the petitioners has relied upon the decisions of Supreme Court in the case of ***Sarvinder Singh vs. Dalip Singh***¹; ***Bibi Zubaida Khatoon vs. Nabi Hassan Saheb & Anr.***²; and ***H. Anjanappa & Ors. vs. A. Prabhakar & Ors.***³.

5. On the other hand, learned counsel for respondents 15 to 18 submitted that the aforesaid respondents are *lis pendente* transferees and therefore, the Trial Court has rightly allowed the application. In support of the said submission, learned counsel has placed reliance on the decision of Supreme Court in the case of ***A. Nawab John & Ors. vs. V. N. Subramaniam***⁴.

¹ (1996) 5 SCC 539

² (2004) 1 SCC 191

³ 2025 SCC OnLine SC 183

⁴ (2012) 7 SCC 738

6. I have considered the rival submissions made on behalf of both sides and perused the record.

7. A two Judge Bench of Supreme Court in **Sarvinder Singh** (supra) held that when a transfer occurs *pendente lite* without leave of the Court, the transferee is barred from seeking impleadment on account of the doctrine of *lis pendens* under section 52 of the Transfer of Property Act, 1882. However, the three Judge Bench of Supreme Court in **Savitri Devi vs. District Judge, Gorakhpur**⁵, *inter alia*, held that the object of Order I Rule 10 of CPC is to avoid multiplicity of proceedings and an application for impleadment should be liberally allowed. The decisions rendered in **Sarvinder Singh** (supra) and **Savitri Devi** (supra) were considered by a two Judge Bench of Supreme Court in **Bibi Zubaida Khatoon** (supra), wherein, it was held that where a suit is pending for long time, the transferee *pendente lite* should not be impleaded as a party under Order I Rule 10 of CPC. A two Judge Bench of Supreme Court recently took note of its previous judgments in **A. Anjanappa & Ors.** (supra) and in para 58 of its decision, culled out the following principles:-

58. *From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:*

i. *First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPS, as a general principle;*

⁵ (1999) 2 SCC 577

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, the transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come on record on his own or at the instance of either party to the suit.

8. Thus, from a perusal of the aforesaid decision, it is evident that the decision to implead the transferee *pendente lite* has to be taken in the facts and circumstances of the case and the transferee *pendente lite* is not entitled to come on record as a matter of right. In the instant case, the suit was filed in the year 2007. The property was transferred by respondents 1 to 3

in favour of respondents 15 to 18 without seeking leave of the Court as required under section 52 of the Transfer of Property Act, 1882. The application seeking impleadment was filed after a period of nearly two decades from the date of institution of the suit. Therefore, discretion to deal with the prayer for addition of the party is exercised erroneously by the Trial Court, which suffers from jurisdictional infirmity.

9. Accordingly, the impugned order is quashed and set aside. The writ petition is allowed.

10. Let a copy of this order be communicated to the Trial Court forthwith.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE
Date: 2025.07.15
15:10:02 +0530

(CHIEF JUSTICE)