



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3413 OF 2025**

Nita Shekhar Shinde ... Petitioner
versus
Leelabai Dyandevo Shinde (deceased)
through legal heirs Shubhangi
Shrikant Mane and Ors. ... Respondents

Mr. Sugandh Deshmukh with Mr. Bhalchandra S. Shinde, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 17 MARCH 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 30 January 2025 passed by the learned Civil Judge, Jr. Division, Indapur, on an application seeking permission to recall the Petitioner/Plaintiff for further examination and also examine the persons in whose favour, during the pendency of the suit, Defendant No.2 has executed an earnest note to sell the suit property.
3. The learned Civil Judge was of the view that the examination of the proposed transferees as witness is not necessary for the adjudication of the suit, which has been instituted for partition and separate possession of the share of the Plaintiff in the suit property. The fact that there is no reference to the earnest note in the pleadings also weighed with the learned Civil Judge.
4. Mr. Deshmukh, learned Counsel for the Petitioner submitted that the

suit was instituted in the year 2007 and the earnest note came to be executed on 16 July 2022. Therefore, the Plaintiff could not have made averments regarding the said earnest note in the plaint. No prejudice would be caused to the parties if the Plaintiff is recalled for further examination restricted to the said earnest note executed by Defendant No.2 and the transferees therein are examined as witnesses in the said suit.

5. Mr. Deshmukh further submitted that the Plaintiff has filed an application for initiating action for breach of the order of status quo, which restrained the Defendants from creating third party rights in the suit property. The Court is informed that the said application is still pending.

6. First and foremost, there is no complete transfer of the interest of the Defendants in the suit property. The suit is instituted for partition and separate possession of the share of the Plaintiff. The question as to whether, during the pendency of the suit, Defendant No.2 has executed an earnest note, in breach of the status quo order, can be decided in the application filed by the Plaintiff for initiating action against Defendant No.2. However, the evidence which the Plaintiff now seeks to adduce by further examining himself and the transferees to the earnest note, is not necessary for the determination of the suit for partition and separate possession, especially when the transfer is inchoate. The learned Civil Judge, thus, committed no error in rejecting the application.

7. The Writ Petition, thus, stands rejected.

(N.J.JAMADAR, J.)