



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2723/2023

Rakesh Venkatesh Mate .Vs. Sau. Manisha Rajesh Thakre and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. A. Markandeywar, Advocate for petitioner.
Mr. U. A. Gosavi, Advocate for respondent No.1.
Mr. K. B. Ambilwade, Advocate for respondent Nos. 2 to 11.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 30, 2025

The petitioner is aggrieved by order dated 26.10.2021 passed by the Trial Court, rejecting application for impleadment as party-defendant to the suit.

2. Having heard both sides and having gone through the material placed before me, it appears that respondent No.1 – original plaintiff filed a suit for partition and consequential relief in March, 2014. Upon specific prayer made by respondent No.1, the Trial Court was pleased to pass order of injunction restraining respondent No.2 to not alienate the suit property pending suit. Despite such order, respondent No.2 (original defendant No.1) sold the property mentioned at Sr. No.II, under schedule of property described in plaint, to the petitioner.

3. In view of above, the defence of respondent No.2 was struck down and was also not permitted to lead evidence. The Trial Court has then taken note of the caution notice issued by respondent No.1 in the newspaper which was published prior to filing of the suit cautioning the people at large to not deal with the property with respondent No.2.

4. In the aforesaid backdrop, the Trial Court considered the plea of petitioner of bona fide purchaser but found no substance. The Trial Court was of the view that where the person has purchased the

property in violation of order passed by the Court then he need not be added as party defendant.

5. The Court further noted that the petitioner has allegedly purchased the property on 06.05.2015 but kept quiet for substantial period and has moved application only on 21.01.2021. The delay of six years has been viewed as another impediment to add the petitioner as party defendant.

6. The Trial Court, amongst other, has relied upon Supreme Court judgment in **Vidhur Impex and Traders Pvt. Ltd. and Ors. .Vs. Tosh Apartments Pvt. Ltd. and anr. [(2012) 8 SCC 384]**. The Court taking stock of various decisions laid down broad principles, that should govern disposal of application for impleadment, one of which is that if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of restraint order passed by the Court or the application is unduly delayed then the Trial Court will be fully justified in striking the prayer for impleadment.

7. Counsel for respondent No.1, taking aid of the aforesaid finding, has rightly argued that in the present case, respondent No.2, has sold the property in violation of the restraint order passed by the Trial Court and further the application for impleadment has been filed after undue delay.

8. As against, counsel for the petitioner has relied upon judgment of the Supreme Court in **Thomsan Press (I) Ltd. Vs. Nank Builders and Investors Pvt. Ltd. and Ors. [(2012) 5 SCC 397]**. As such, the Supreme Court has considered the law laid down in *Vidhur's* case and held as under:

“There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not

deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.”

9. As could be seen, the Supreme Court held that even if the suit property is transferred in breach of injunction issued by the competent Court, such a transfer may remain valid as between the parties to the transaction. Thus, the focus in *Thomson’s* case was on effect of transfer of the property pending suit, where the order of injunction is passed. As against, *Vidhur’s* case deals with rights of the parties to be impleaded as party to the proceedings, where it enters into transactions pending suit. The Supreme Court held that where the property is sold in violation of the restraint order passed by the Court and where the application is unduly delayed then the Trial Court will be fully justified in declining the prayer of impleadment.

10. In the present case, the transaction under question is done not only in breach of injunction order but the application has also been moved after a period of six years, that too, without any justification.

11. That being so, I do not find any reason to interfere with the impugned order in supervisory jurisdiction under Article 227 of the Constitution of India. The writ petition is dismissed. No order as to costs.

(Anil L. Pansare, J.)