



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

WRIT PETITION NO.6123/2024

Abhijit S/o. Pandurang Alsí,
Aged about 62 years, Occ.-Business,
R/o. Jatharpeth, Akola
Tq. and Dist. Akola.

.... **PETITIONER**
(Ori. Plaintiff No.3)

...VERSUS...

Vijay S/o. Shridhar Alsí,
Aged about 84 years, Occ. Retired,
R/o. Gawati Bungalow, Pandurang Peth,
Alsí Plot, Akola, Tq. and Dist. Akola.

.... **RESPONDENTS**
(Ori. Defendant No.1)

Mr. Sameer Sohoni, Advocate for Petitioner.
Mr. A. R. Deshpande, Advocate for Respondent.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 11/03/2025
DATE OF PRONOUNCING THE JUDGMENT : 16/04/2025

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard

finally with consent of the learned Counsel for the parties.

2. Being aggrieved by the impugned order dated 26.09.2024, below Exhibit-332 in Special Civil Suit No.139/2006, passed by the Court of 2nd Joint Civil Judge,

Senior Division, Akola, the Petitioner is constrained to file this writ petition.

3. Petitioner and his brother and sister are the plaintiffs whereas, the Respondent and some others are the defendants in the Special Civil Suit No.139/2006, pending before the learned 2nd Joint Civil Judge, Senior Division, Akola.

4. On 07.10.2006, the Petitioner/plaintiff has filed a suit for partition, separate possession and for mesne profit. The plaintiffs in the above said suit are claiming partition and separate possession to the extent of 1/4th share of the suit property. The Respondent opposed the suit claim by filing his written statement dated 21.04.2008. The main contention of the defendant No.1 is that the suit properties are not jointly owned and possessed by the plaintiffs and defendants. He has further contended that in the year 1995 the then joint owners of the suit properties amicably settled their dispute regarding partition of the property and effected partition. He has further

pleaded that after partition was effected, the respective share holders started enjoying their properties. During the pendency of the suit, the Respondent/defendant executed a Sale deed dated 18.03.2024, which was registered on 19.03.2024, in respect of one of the suit properties in favour of Vasant Madanlal Khandelwal. Therefore, the Petitioner/plaintiff was required to move an application dated 02.04.2024 under Order 1 Rule 10 of the Code of Civil Procedure (for short the “CPC”) for addition of party and for amendment of the plaint under Order 6 Rule 17 of the CPC. The property sold is mentioned in para 2 of the said application. By the said application, the Petitioner requested the learned Trial Court to permit the Petitioner/plaintiffs to add the purchaser Vasant Khandelwal as a party defendant and also requested to permit them to amend the plaint accordingly. On 02.04.2024, the Respondent/defendant opposed the application by submitting his say. The learned 2nd Joint Civil Judge, Senior Division, Akola vide order dated 26.09.2024, rejected the application below Exhibit-332 of the Petitioner. The said order is the subject matter of challenge in the present Writ Petition.

5. Learned Counsel for the Petitioner contended that the reasoning given by the learned Court below in para 4 of this order is not sufficient to reject the application of the Petitioner, as the learned Court below has observed that the suit properties are in large numbers and earlier the Petitioner has added the defendant Nos.4 and 5 in the suit as they have purchased the suit property and later on they have deleted their names. According to the Petitioner, these facts cannot be and should not come in the way of the plaintiff while adjudicating the application Exhibit-332.

6. It is further contended that the reason for rejection of the application given by the learned Court below is that by the order dated 04.03.2024, passed in Writ Petition No.5348/2023, this Court has ordered for disposal of the suit at the earliest. The learned Court below was of the view that moving an application for adding the subsequent purchaser amounts to prolonging the matter by the plaintiff. According to the Petitioner, this reasoning is not proper as the suit is filed by the Petitioner/plaintiff for partition and for getting separate

possession of their properties. Addition of subsequent purchaser to the suit is necessary for the proper adjudication of the matter and also necessary in order to avoid further complication in the event of passing of the decree by the learned Trial Court. Accordingly, the impugned order dated 26.09.2024 needs interference by this Court and also needs to be set aside.

7. Learned Counsel for the Petitioner relied on ***Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.***, reported in ***(2021) 6 SCC 418***.

8. Learned Counsel for the Respondent supported the order passed by the learned Court below in Exhibit-332 and contended that the lower authority has rightly taken into consideration the fact that in order to prolong the matter, Petitioner had filed the said application and passed an appropriate order which needs no interference and which also needs to be confirmed.

9. Learned Counsel for the Respondent relied on the following citations :

- (i) *H. Anjanappa and Others Vs. A. Prabhakar and Others*, reported in *2025 SCC OnLine SC 183* and
- (ii) *Rama @ Ramdas Bapu Khakal and Another Vs. Narayan Govinda Khakal and Others*, reported in *2018(1) Mh.L.J, 65*.

10. Heard both the parties. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties.

11. There is a suit bearing Special Civil Suit No.139/2006 filed by Petitioner/plaintiff for partition, separate possession and for mesne profit. During the pendency of the suit, the defendant Vijay Shridhar Als executed a sale deed in favour of Vasant Madanlal Khandelwal by registered sale deed dated 18.03.2024 registered on 19.03.2024. In view thereof, the present Petitioner/plaintiff sought permission to amend the Suit to bring on record these facts and also joining the said Vasant Madanlal Khandelwal as party defendant. He

also seeks permission to add prayer clause in consequence thereof. It is contention of the Petitioner that the purchaser was having idea of pendency of suit, which can be revealed from the sale deed itself. Thus, purchaser purchased the property with full knowledge of pendency of above suit and he is not a *bona fide* purchaser. The said application came to be rejected by the learned 2nd Joint Civil Judge, Senior Division, Akola on the ground that the sale deed was executed on 17.03.2024, however, no application is filed by the plaintiff to add proposed defendant No.11. However, if the application is perused, it is under Order 1 Rule 10 of the CPC for addition of party and for amendment the plaint under Order 6 Rule 17 of the CPC. In the body of application, it is specifically mentioned that Vasant Madanlal Khandelwal be added as defendant No.11. This application is moved on 02.04.2024 that means immediately after execution of the sale deed dated 17.03.2024, therefore, what is observed by the learned Civil Judge, Senior Division, Akola in para No.3 is perverse. The learned Judge further observed that earlier defendant Nos.4 and 5 were added as per Exhibit-166, however, he applied for

deleting their names vide Exhibit-256. After rejection of the same, he challenged the said order before this Court by filing Writ Petition No.2536/2021. The said writ petition came to be allowed and name of defendant Nos.4 and 5 were deleted from the array of defendants. From this application, it is concluded by the learned Judge to prolong the present litigation, the plaintiff is making such applications and rejected the application for amendment and for addition of parties.

12. Learned Counsel for the Petitioner relied on ***Rahul S. Shah*** (supra), wherein the Hon'ble Apex Court held in para Nos.35 and 37 as under :

“35. Having considered the above mentioned legal complexities, the large pendency of execution proceedings and the large number of instances of abuse of process of execution, we are of the opinion that to avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit.

37. It also becomes necessary for the Trial Court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the defendant.”

It is settled position of law that amendment principally should be allowed to prevent multiplicity of litigation.

13. As against this, the learned Counsel for the Respondent relied on *H. Anjanappa* (supra), however, this judgment in fact, supports to the contention of the Petitioner.

The Hon’ble Apex Court in para 50 held as under :

“50. A lis pendens transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order XXI of the CPC which speaks of transfer or assignment inter vivos or by operation of law made by the plaintiff-decree-holder. The transferee may apply for execution of the decree of the Court and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder.

51. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant-judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the Court.”

14. Thus, even if the purchaser of the property with knowledge of pending litigation is not made a party still he is liable, what is held by the Hon'ble Apex Court that the scope of Order 1 Rule 10 and Order 22 Rule 10 of the CPC is similar. Therefore, the principles of applicability of Order 22 Rule 10 of the CPC in order to bring the purchaser *pedente lite* on record are applicable to Order 1 Rule 10 of the CPC. Under Order 1 Rule 10 (2) of the CPC, the Court is required to record the finding that persons sought to be impleaded as party in the suit is either necessary or proper party.

15. Learned Counsel for the Respondent also placed reliance on ***Rama @ Ramdas Bapu Khakal*** (supra), wherein this Court held in paras 11 and 12 as under :

“11. The law is thus settled that an alienee pendente lite would always be bound by the verdict of the Court in the suit and would always be subject to the final decree that would be passed. Such an alienee could be brought on record as a defendant under Order 1, Rule 10 of the Civil Procedure Code if it appears that his substantial interest in the suit property would depend upon the verdict in the said suit.

12. It also cannot be ruled out that the defendant who has sold the suit property or a portion thereof during the pendency of the litigation, may not subsequently demonstrate or exhibit that level of interest in contesting the suit which he would have normally generated, had his interest in the suit property survived. Having given up the right, title and interest in the property, he may not eventually have the desire to defend his non-existing interest which he would have otherwise defended. In such a situation, there is a possibility that the alienee on the one hand would be precluded from espousing his cause and on the other hand would be left to the mercy of the defendant who has lost interest in the suit.”

Thus, this judgment is in fact supporting the case
of Petitioner.

16. In view of the above settled position, the learned 2nd Joint Civil Judge, Senior Division, Akola recorded perverse finding that there is no application for addition of party and also that application is moved with an intention to prolong the matter, as it is seen the sale deed was executed on 17.03.2024 and immediately thereafter the application for impleadment as well as amendment is moved on 02.04.2024. As such, neither there is a delay nor it can be said that application is moved for prolonging the matter. Therefore, the impugned order dated 26.09.2024 passed below Exhibit-332 in Special Civil Suit No.139/2006 is liable to be set aside.

17. Accordingly, the Writ Petition is **allowed**.

18. The impugned order dated 26.09.2024 passed below Exhibit-332 in Special Civil Suit No.139/2006 by the 2nd Joint Civil Judge, Senior Division, Akola is hereby quashed and set aside.

19. The Application Exhibit-332 is allowed. The Petitioner/plaintiff to carry out the amendment within a period of three weeks from the passing of this order.

20. The learned 2nd Joint Civil Judge, Senior Division, Akola is hereby directed to decide the suit as expeditiously as possible within a period of one year.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak