

MHAH130001022024

**ORDER BELOW EXH. 40 IN RCA NO. 03/2024**

Ganesh Jare and 1 Anr. ....Appellants  
Vs.

Ujwala Hapse and 7 Ors. ....Respondents

**( Order passed on 20th day of September 2025 )**

1] This application is filed by Respondent no.8 Subhash Chordiya (defendant no.7) for his transposition as Appellant no.3.

2] This appeal is filed challenging judgment and decree dated 24/03/2022 in Regular Civil Suit 389/2008. Plaintiff, defendants nos. 3, 4, 5, are daughters and defendant no.6 is son of defendants nos. 1, 2. The suit was for partition and declaration that sale deed dated 10/02/1998 of 50 R land made by defendant no.1 in favour of defendant no.7 Subhash Chordiya was not binding on plaintiff. (The suit property is 1H 2R land in Gat no. 554 of Lohgaon, Taluka Newasa.) During pendency of suit, defendant no.7 sold 25 R land to Ganesh Jare and 25 R land to Ushabai Jare. Ganesh Jare and Ushabai Jare were added as defendant nos. 8 and 9. Both the sale transactions were made on 20/03/2013.

3] By the judgment dated 24/03/2022, suit is decreed, it is declared that, plaintiff, defendants nos. 1 to 6; each is having 1/ 7<sup>th</sup> share in suit property and sale deeds dated 10/02/1998, 20/03/2013 are not binding on plaintiff. Decree was directed to be sent to The Collector as per section 54 of the Code of Civil Procedure.

4] Defendants nos. 8 and 9 filed Civil Miscellaneous Application no. 36/2023 for condonation of delay caused to prefer Appeal. It was allowed on 05/02/2024. Accordingly, present Appeal is registered. Defendants nos. 8 and 9 are Appellants, plaintiff is Respondent no.1, defendants nos. 1 to 6 are Respondents nos. 2 to 7.

5] In this Application at Exh. 40; in para no.2 it is stated that, arguments could not be advanced on behalf of defendant no.7 in RCS 389/2008. In para no.3, it is stated that, in the judgment and decree, it is declared that, sale deed dated 10/02/1998 made in favour of defendant no.7 was not binding on share of plaintiff. In para no.5, it is stated that, as the sale deed was made in favour of defendant no.7 (Respondent no.8), it is necessary that, he should be transposed as Appellant no.3 and such transposition would facilitate hearing of this Appeal.

6] Plaintiff, defendants nos. 3 to 5 (Respondents 1, 4 to 6) have filed their Say at exh.42 and opposed the

application at exh.40. In para no.4 of the say, it is stated that while trial court has passed order of status quo defendant no.7 has sold 25R + 25R land to defendants nos. 8, 9. In para no.5, it is stated that, in Civil Miscellaneous Application 36/2023, respondent no.8 therein (defendant no.7) has made averment that he was unnecessarily dragged in that delay condonation application and it be rejected with cost.

7] Learned Advocate for respondent no.8 relied on observations in judgment of The Honourable High Court Bombay in Pragati Enterprises vs Sahakar Corporation, **2019(1) ALL MR 41.**

8] In case of Pragati Enterprises, application was made for transposition of defendants nos. 2, 3, 4 as plaintiffs nos. 2, 3, 4.

9] Rather initially, the suit was filed by plaintiff, defendants nos. 2, 3, 4 against defendant no.1 in the City Civil Court; however, Deed of Conveyance was for Rs. 14 Crores and pecuniary jurisdiction was with The Honourable High Court. City Civil Court granted permission to plaintiffs (plaintiff, defendant nos. 2, 3, 4) to withdraw the suit with permission to file fresh suit. While filing the suit in The Honourable High Court, only one of the plaintiffs

filed suit and others were joined as defendant nos. 2, 3, 4. These facts are totally different from present position.

10] Learned Advocate for respondent no.8 relied on observations in judgment of The Honourable Supreme Court in case of Mukesh Kumar vs Col. Harbans, **AIR 2000 SC 172.**

11] In facts of that case, half of the property was proposed to be purchased by plaintiffs nos. 1 & 2 who had initially filed suit for specific performance of contract. Other half part of the property was proposed to be purchased by plaintiff no.3 who was transposed as plaintiff no.3 from the array of defendants. This transposition of plaintiff no.3 was made after the period of limitation was expired after the agreement to sell was made.

12] In Para no.9 of the Judgment, Their Lordships pleased to observe that “ if Court is satisfied that omission to include plaintiff or defendant was due to a mistake made in good faith, Court may add party and it can be deemed to be added on earlier date. Provision of Section 21(2) would not apply in such case.”

13] In the present case before me respondent no.8 was already party in the original suit. There was no any

reason or occasion for a mistake for him to join as appellant. That apart, he objected application for delay condonation.

14] Further, even if, he is not transposed as appellant, nothing will prevent him from arguing his case. Rule 4 of Order XLI states that anyone of plaintiffs or defendants may appeal from the whole decree. Defendant No. 7, 8 & 9 if had common contentions in the suit and common grounds in appeal, even if transposition is not made, it will not make any difference.

15] Learned Advocate for respondent no.8 relied on observations in judgment of The Honourable High Court Bombay in case of Ramchandra Beedkar Vs. State of Maharashtra, **2020(4) Mh.L.J. 702**. It was a case under Land Acquisition Act.

16] Learned Advocate for respondent no.8 relied on observations in judgment of The Honourable Supreme Court in case of Kiran Tandon Vs. Allahabad Development Authority reported as **2004(3) BCJ 341 SC**.

17] Learned Advocate for respondent no.8 relied on observations in judgment of The Honourable Supreme Court in case of Saila Bala Dassi Vs. Nirmala Dassi, **AIR**

**1958 SC 394.**

18] Here, in the present case, defendant no,7 has filed his written statement in the original suit. Even, if he is transposed or not transposed, he can very well participate in the appeal. It is absolutely not necessary to transpose him as appellant no.3. Hence, this application is rejected.

**Date : 20.09.2025.**

**Place : NEWASA**

**( R. R. Hastekar )**

District Judge-2,