

**ORDER BELOW EXH. 46**

**Bhimaji and others V/s Rustamji and others**

Read the application and say filed by Decree Holder. Perused record. Heard both the Counsels.

2] This is an execution petition. Wherein application for addition of party is filed.

3] It is submitted on behalf of applicant that, suit property Survey No. 106, Block No. 253/2, admeasuring 1 H 82 R, situated at village Mukhed, Tal. Niphad, Dist. Nashik was originally owned by one Rustamji Barjorji Joshi. Original owner agreed to sale that property for the valuable consideration of Rs. 15,000/-. To that regard, agreement to sale came to be executed on 12/04/1979 in favour of Rangnath Runjaji Lilke and his brother Eknath. Rs. 9,000/- was paid as a part consideration and Rs. 6,000/- was supposed to be paid at the time of execution of sale deed. That agreement to sale was cancelled for some reason and fresh agreement to sale came to be executed in favour of Bhima Lilke and Gangadhar Lilke on 03/10/1979. All the expenses and consideration amount was borned by the applicant. Only for convenience name of Rangnath and Eknath were mentioned in agreement to sale. Since, the expenses were borned by the applicant, he is the necessary party to the proceeding. Hence, the present application is filed

4] By way of filing say at Exh. 48 application is resisted. Cancellation of earlier agreement to sale is admitted by the Decree Holder. However, rest of the contention are denied. It is contended that, the present applicant is not at all related with the said transaction. Expenses

are not borned by the applicant and therefore, he is not a necessary party to the present proceedings.

5] In support of his contention, Mr. Chavan, learned Advocate appearing on behalf of Decree Holder submitted that, he was well aware about Civil Suit bearing No. R.C.S. 14/1997. The application is filed at belated stage. No explanation is given as to why the remedy was not availed during the pendency of the suit. Further, reliance is placed on the cross-examination of the present applicant, in R.C.S. No. 146/2012. It could be seen from that cross-examination that, the applicant was well aware about the pendency of suit between Decree Holder and Judgment Debtor. Admittedly, no explanation is offered by the applicant for filing this application at this stage.

6] In reply, it is submitted on behalf of applicant that, one agreement was executed in between decree holder and the present applicant. It could be seen from the recitals of that agreement that, the present applicant had purchased that property in the name of Decree Holder. Under these circumstances, even the contention of the applicant is accepted as it is, it is of no consequences for the present application. Considering the admission given by the present applicant in his cross-examination, in suit bearing No. R.C.S. 146/2012, I find no substance in the application. In result following order is passed.

**ORDER**

Application Exh. 46 stands rejected.

Sd/-xxx  
(Vijay C. Gawai)  
Civil Judge Junior Division,  
Pimpalgaon (B.), Tal. Niphad,  
Dist. Nashik.

Date : 22/04/2019