

CNR No.MHRG170037452019 	<u>Regular Civil Appeal No.50/2019</u> Anant Nana Bhagat & Ors. Vs. Vilas Nana Bhagat
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ORDER BELOW EXH. 89

01. This is an application filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 by the appellant for impleadment of transferee pendente lite in the present appeal as a proposed respondent Nos. 2 to 9.

02. The respondent has contested the said application by filing his say at Exh.94. Appellants submitted written notes of argument at Exh. 93.

03. Perused the application and say. Heard both sides.

04. Ld. Advocate for the appellants submitted that present appeal is preferred against judgment and decree dated 27/09/2011 passed by Ld. Civil Judge, J.D. Karjat, in Regular Civil Suit No. 16/2006. The appellants are the original plaintiffs in the RCS No. 16/2006. The suit is for declaration and injunction in respect of S.No. 16 and 12/1 situated at village Chinchavali, Tal. Karjat, District Raigad. The appellants have registered notice of lis pendens bearing No.729/2021 at Sub-Registrar, Karjat. Despite this the appellants came to know from the local estate agent that respondent executed sale deed on 18/04/2023 in favour of proposed respondent Nos.2 to 7 in respect of 0 H. 18 R out of Survey No.12/1 and on 23/06/2023 another sale deed was executed in favour of respondent Nos. 2 to 9 out of remaining area

83 R of survey No.12/1. Despite pendency of the present appeal and notice of lis pendens, respondent alienated suit property Survey No.12/1 without permission of the Court. Hence, the transferee should be added as proposed respondent.

05. Per contra, Ld. Advocate for the respondent submitted that application is not maintainable at the stage of appeal. Transferees are not necessary and proper party to be added as a respondent in the present appeal. Already suit was decided on the merit by the Ld. Trial Court. If the transferees are added to this appeal the question of leading oral and documentary evidence would arise, which create complication in the appeal. The transferees are bound by ultimate decision of the appeal. Therefore, he prayed for rejection of the application.

06. On perusal of the record of the case, it appears that original plaintiffs/appellants had filed RCS No.16/2006 against the respondent/defendant for declaration that suit property S.No. 16 and 12/1 are jointly owned and possessed by the plaintiffs and defendant and for Will executed in favour of defendant is not binding on the plaintiff and for injunction from restraining the defendant from creating third party interest in the suit property. The suit of the plaintiff is dismissed by the Trial Court on 27/09/2011. The plaintiff challenged the said judgment and decree of the Trial Court by preferring this appeal.

07. Admittedly, during pendency of the present appeal respondent sold out the suit property S.No. 12/1 to Kiran Dattatrey Borade, Dipika Kiran Borade, Sandeep Dattatrey Bhoir, Vrunda Sandeep Bhoir, Anvi Amol Mande and Devishree Kedar Mande by executing two independent registered sale deeds

No.KJR-2/2078/2023 on 18/04/2023 for 18 R area and registered sale deed No.KJR-2/3508/2023 on 23/06/2023 for 83 R area of S.No. 12/1.

08. In Amit Kumar Shaw & Anr vs Farida Khatoon & Anr, reported in AIR 2005 SUPREME COURT 2209 the Hon'ble Supreme Court held that, "*A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.*"

09. In the light of the above ratio the transferee pendente lite is a representative-in-interest of the party from whom he has acquired that interest. As per Order 22 Rule 10 of the C.P.C in case of assignment, creation or devolution of interest during the pendency of the suit, the suit may, by leave of the Court, be continued by or against the person to/upon whom such interest has come or devolved. Therefore, transferee pendente lite being an

assignee of interest in the property is a necessary party in the appeal. Therefore, the proposed respondent Nos.2 to 9 are required to be impleaded in this appeal for just decision of this appeal. As result, I pass following order-

ORDER

1. The application (Exh.89) is allowed.
2. Appellant is permitted to make amendment in the appeal as prayed within 14 days from the date of this order.

Panvel,
Dated :- 05/11/2025

(S.R. Chavan)
District Judge- 4
Panvel-Raigad