

ORDER BELOW EXH.19 IN REGULAR CIVIL SUIT NO. 104/14.

1. This is an application filed under Order 1 Rule 10(2) of the Code of Civil Procedure by the applicants. Vide captioned application they have prayed for adding them as co-defendants in the suit being an interested party. According to them they have purchased the suit property from the original landlord deceased Deshbandhu Lilaram Marawa vide registered agreement of sale dated 17/10/2013. Therefore, their interest have been created in the suit property. Hence, this application.

2. The plaintiff has resisted the application vide their detailed say at Exh.25. According to the plaintiff agreement of sale never creates any right title or interest in the suit property. The proposed defendants are not at all interested parties for deciding the dispute finally. They are not necessary parties. Accordingly, prayed for rejecting the application.

3. Heard Advocate Shri. Mohan Tayade for the applicants and Advocate Shri. Deepak Gaikwad for the plaintiff's.

4. Admittedly, suit is filed for relief of declaration of ownership, possession and permanent injunction against the original vendor and his predecessor in title. According to the applicants they have right title interest in the suit property by virtue of registered agreement of sale executed by the defendant No.2, who was no alive on the date of filing of the suit. Both learned counsels have relied upon the Judgments of Hon'ble Bombay High Court in regards their submissions. I have gone through the ratio laid down by the Judgments cited by both

the parties minutely. The plaintiff has relied upon following Judgments of Hon'ble Bombay High Court. 1.**Sitaram Ganu Mhaskar V/s.Keshav Ramchandra Shelar reported in 2001 ALL MR (4) page no.116**, 2.**Balu Baburao Zarole V/s. Shaikh Akbar Shaikh Bikan reported in 2001 BCR (3) page no.255**. I have gone through the ratio laid down by the Hon'ble High Court in the case cited supra. Its states that, “*An agreement of sale deeds does not transfer any interest in the property.*”

5. The plaintiff has also relied upon Judgment in the case of **Bibi Zubedar Khatun V/s. Nabi Husen Saheb and Another reported in AIR 2004 SC page no.173 (1)**. The ratio laid down by the Hon'ble apex Court states that, “*Right to seek impleadment in pending suits and amend pleadings is not a absolute right or rule in all cases.*”

6. Apart the ratio laid down by the Hon'ble High Court in catena of Judgments cited supra on behalf of the plaintiff, section 54 of Transfer of Property Act states that, “*A contract for the sale of immovable property does not, of itself, create any interest or charge on, such property.*” Taking into consideration section 54 of Transfer of Property Act, though the applicants are alleged purchaser of the suit property by virtue of registered agreement of sale alleged to be executed by the defendant No.2, in the present suit of declaration of ownership, they have no right title interest in the suit property.

7. Basic principle of law behind the same is based on principles of equity whereby the interested parties have given the specific remedy of claiming specific performance of their agreement from the legal

representative of the so called deceased vendor. Admittedly, the present suit is filed for the declaration of ownership rights of the plaintiff accrued by virtue of registered sale deed executed by defendant No.1 in favour of plaintiff. Therefore, the applicants cannot be said to be an interested party for the adjudication of dispute finally in the present suit.

8. Order 1 Rule 10(2) of Code of Civil Procedure though empowers the Court to add or strike out the parties at any stage, it expects a specific contingency, that such parties which are to be added must be necessary, in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The questions involved in the suit are in respect of rights in between vendor of the property and purchaser that is plaintiff. Therefore, the submissions advanced on behalf of the third parties as an interested parties does not stand to reason much less appears legal.

9. The Ld. counsel for the applicants have relied upon the Judgment in the case of **M/s. Chitralkha Builders and Anr. V/s. G.L.C.Employees Sonal Vihar Co-op. Hsg. Soc. Ltd. And Ors., reported in 2005(4) of ALL M.R. page no. 584.** The sum and substance of the ratio laid down by the division bench of Hon'ble High Court states that, “ *The addition of necessary parties depends upon the reliefs claimed by the parties. The Court will have to examine whether these reliefs cannot be granted without the intervention and addition of the third parties that is interested parties. If, it is so, then they would definitely be called as a necessary party.*” The Hon'ble High Court has also observed that, “*A necessary party is one without whom no order*

can be made effectively; a proper party is one in whose absence an effective order can be made out whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

10. In the case in hand as stated above section 54 of Transfer of Property Act nowhere creates any interest or charge on the property. Therefore, even though there is registered agreement of sale, it is not that the third party have no remedy given by statute. The applicants have an opportunity to seek the specific performance of agreement of sale from the legal representative of the vendor. Their right of claiming specific performance can be protected by virtue of specific remedy. On the contrary taking into consideration the relief's claimed by the plaintiff, the applicants do not appear a necessary party to adjudicate the dispute finally. Hence, I pass the following order :

ORDER

1. Application stands rejected.
2. Dictated and pronounced in open Court.

Khalapur.
Date : 15/09/2015

(M.P.Saraf)
Civil Judge, J.D. Khalapur.