IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3941 OF 2026

Sulochana Chandrakant Sawant]
Aged about 55 years,]
Occupation: Household,]
R/o. Nagewadi, Taluka and District]
Satara. 415015]...Petitioner
](Orig. Defendant)

Versus]
]

1. Shankar Haribhau Kapse,]
Aged about 37 years,]
Occupation: Agriculturist,]
]

2. Navnath Haribhau Kapse,]
Aged about 35 years,]
Occupation: Agriculturist,]
Both R/o. Nagewadi,]
Tl. & District: Satara. 415015]
]

3. Bharat Jaysing Sawant,]
Aged about 45 years,]
Occupation: Agriculturist,]
R/o. Nagewadi,]
Tal. & District: Satara. 415015]
At present R/at. Ashtavinayak]
Rahiwasi Sangh, Post Ghodbandar]
Road, Chitalsar Manpada,]
Thane – 400 607.]...Respondents
(Nos.1 and 2 are Orig. Plaintiff and No.3 is Orig. Plaintiff No.3 impleaded vide order dated 27.10.2025 passed below Exh-80 in R.C.S. No.298 of 2018)

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Adv. Dilip Bodake a/w Adv. Sharad T. Bhosale, Adv. Amar P. Dhumal and Adv. Mohsin Khan, for Petitioner.
Adv. Kalpesh U. Patil a/w Adv. Digambar V. Jadhav, for Respondents.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED DATE : 07th OCTOBER, 2026.
PRONOUNCED DATE : 19th OCTOBER, 2026.

FINAL ORDER :

Heard finally with the consent of the parties.

2. Being aggrieved by the order dated 27.10.2025 passed below Exhibit - 80 and order dated 18.03.2026 passed below Exhibit - 88 in RCS No. 298 of 2018, petitioner has approached this court. She is original defendant and respondent Nos.1 and 2 are plaintiffs. The respondent No.3 is newly added plaintiff No.3.

3. The respondent Nos.1 and 2 have filed RCS No.298 of 2018 for declaration and mandatory injunction. The suit land is measuring 1 R from Gat No.482 situated at Nagewadi, Taluka and District Satara which is stated to be joint family property of the plaintiffs. An unregistered agreement dated 29.11.2012 upon which the defendant is relying for defending possession is alleged to be bogus and forged. The defendant is stated to be in illegal possession of the suit land and liable to be evicted.

4. The suit is contested by the petitioner on the ground that initially

Agreement to Sell was executed on 23.05.2000 to the extent of 03 R land as original plaintiffs were in need of money. Thereafter, on 29.11.2012 agreement of lease for 99 years was executed for 01 R by accepting Rs. 30,000/- and the petitioner was inducted. She is stated to be using the suit land by raising structure with the permission of the competent authority. The petitioner had filed RCS No.514 of 2013 for specific performance of contract in which the Agreement to Sell was proved but she was non-suited. Taking disadvantage of that, the present suit is filed.

5. The issues are settled between the parties. They led oral evidence. The notes of arguments were submitted on 24.09.2025 and the matter was closed for judgment. The respondent Nos.1 and 2 submitted application Exhibit - 80 under Order I Rule 2 of the Civil Procedure Code, 1908 (C.P.C.) to implead the purchaser. It was contested by the petitioner. By impugned order, the application was allowed and present respondent No.3 came to be added. Then the affidavit in lieu of examination in chief was submitted by respondent No.3 at Exhibit - 87. The petitioner sought to discard the affidavit vide application Exhibit - 88. By another impugned order, petitioner's application was rejected.

6. The learned counsel for the petitioner submits that the respondents suppressed execution of the sale deed and it was executed

during the pendency of the suit by the original plaintiffs. The application Exhibit 80 is not tenable as it was not preferred by purchaser. It is submitted that the added party is not necessary or proper party. It is further submitted that the affidavit of examination in chief should have been discarded as no permission was solicited.

7. Per contra, learned counsel Mr. Kalpesh Patil for the respondents would submit that the respondent No. 3 purchased 10R of land, whereas the controversy pertains to 01R land. It is further submitted that it is the plaintiffs who filed application for impleadment and, therefore, no prejudice would be caused to the petitioner. It is vehemently submitted that as the interest is acquired by the purchaser he is necessary party as per Order XXII Rule 10 of the C.P.C. It is further submitted that once purchaser is impleaded, he has consequential right to lead evidence.

8. I have considered rival submissions of the parties. The evidence was led and matter was posted for the arguments. The sale deed was executed by the respondent Nos. 1 and 2 in favour of the respondent No. 3 on 26.03.2025 for 10R of land from gut No. 482. The sale deed is already permitted to be produced on record. Admittedly, interest is created in the respondent No. 3 before final order could be passed in the suit. In such a case Order XXII Rule 10(i) of the C.P.C. applies.

9. The alienation in favour of the respondent No. 3 is subject to

outcome of the suit. Due to such alienation, the respondent No. 3 cannot be said to be the stranger to the litigation. The respondent Nos. 1 and 2 who are the plaintiffs, are the *dominus litis* and they have sought impleadment of the respondent No. 3. I find that adding of the party is necessary to adjudicate the questions involved in the suit effectively and completely. It is not made clear as to whether the alienation of 10R of land includes the disputed site or not. The Trial Court is required to determine this aspect of the matter and for that purpose the presence of the purchaser is required in the suit. I do not find any perversity or patent illegality in the order passed below Exhibit 80.

10. My attention is adverted by the learned counsel for the petitioner to the judgment of the Supreme Court in the matter of **H. Anjanappa and Ors. Vs. A. Prabhakar and Ors. H. Anjanappa and Ors. Vs. Beena Anthony and Ors.**[1], which *inter alia* refers to various judgments and culls down the principles in para No. 58, which are as follows :

> 58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:
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> i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;
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> ii. Secondly, a transferee pendente lite is not entitled to come on

1 AIR 2025 SC 924

record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

11. The principle quoted at clause (viii) is relevant. I am of the considered view that deleting the respondent No. 3 would be against the principles of natural justice.

12. Once the respondent No. 3 is impleaded in the suit, he needs to be given opportunity to lead evidence. No prejudice would be caused to the petitioner, as he would be getting opportunity to cross examine the witness. I do not find any illegality in the order passed below Exhibit 80 as well 88.

13. For the reasons stated above, I am confirming the impugned orders. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

14. After pronouncement of the order, the learned counsel appearing for the petitioner prays for continuation of the interim relief.

15. The learned counsel appearing for the respondents opposed the request.

16. The R.C.S. No.298 of 2018 is still pending before the Trial Court, from which the impugned orders are passed. I do not find that a case is made out for continuation of the interim relief, as it would create complications. The request is, therefore, rejected.

[SHAILESH P. BRAHME, J.]