



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 12717 OF 2025

Balu Shankarrao Patode

VERSUS

Narayan Maruti Wattamwar And Another

...

Tungar Nikhilesh K. for the Petitioner.

Mr. P.G. Rode for Respondent No.1.

Mr.Sharad Vijay Natu for Respondent No.2.

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 21.08.2026

PER COURT :

1. The Petitioner is assailing the order passed by the Joint Civil Judge Senior Division, Udgir on 25th August, 2025, passed below Exhibit-35 in Special Civil Suit No.57 of 2024. The learned Civil Judge Senior Division has allowed the application for impleadment of Respondent No.2 herein as party to the suit filed by the present Petitioner. The present Petitioner is the original Plaintiff in Special Civil Suit No.57 of 2024 and Respondent No.1 is the sole original defendant in the said suit. The suit is filed by the Petitioner for specific performance of contract in respect of the property situated at Udgir in Sarvodaya Co-operative housing Society, Udgir bearing Municipal House No.3/3/230 (Old), 3-3-1057 (New) bearing Plot No.7.

2. The learned Advocate for the Petitioner, Mr.Tungar submits that the defendant was the owner and possessor of the above-mentioned property. Since he was in need of money for his business he expressed his willingness to sale out the said property. Therefore, after preliminary talks between the parties, a notary registered agreement to sale was executed on 5th April, 2024. It was agreed that the property is to be sold for total consideration of Rs.1,60,01,000/-. The Plaintiff paid Rs.51,000/- as an earnest amount and thereafter also paid Rs.10,50,000/- vide cheque no.000137 dated 6th April, 2024 in presence of witnesses, for which the defendant has issued receipt. It is claimed that possession of the property was also handed over to the Plaintiff. On the very day, he was also permitted to carry out construction. It was agreed that the balance amount was to be paid at the time of execution of sale deed. The entire transaction was to be completed within period of six months.

3. It is submitted that even though the Plaintiff has requested the defendant from time to time to accept the balance amount and execute the sale deed, but defendant has avoided by one or the other ground. As a result, the Plaintiff was constrained to issue legal notice and accordingly the legal notice is issued through his Advocate on 15th April, 2024. Although the defendant has replied the notice, he has failed to execute the sale deed. As a result, the Plaintiff has filed Special Civil Suit No.57 of 2024, which is pending before the Civil Judge Senior Division, Udgir. The defendant that is Respondent No.1 appeared and filed his

written statement and resisted the suit. In the written statement filed by the defendant, it is stated that on 1st June, 2001, the defendant had agreed to sell the suit property to Respondent No.2 herein by executing Isar Pavati and accordingly Respondent No.2 got electricity meter for the suit property. The defendant claimed that the Plaintiff has prepared forged documents and obtained signatures of the defendant. Since the Respondent No.2 is not a party to the Special Civil Suit 57 of 2024, therefore, he preferred an application below Exhibit-35 and Order 1, Rule 10 of the Civil Procedure Code (for short '**CPC**'), seeking direction directions against the Plaintiff to add Respondent No.2 as a party defendant. It was stated by the Respondent No.2 in the application, that he has a prior claim over the said property, since the Respondent No.1 had already executed an agreement to sale of the suit property in favour of Respondent No.2, herein accepting the earnest amount on 3rd November, 2001, and he was in possession of the property since last more than 25 years. Therefore, he is in valid possession over the suit property. It was also brought to the notice of the Court that then was some litigation of the same property pending between the defendant and his family members and in the civil suit having RCS No.159 of 2012, filed before the Joint Civil Judge Senior Division, Udgir. In the written statement the defendant has already admitted that the agreement between himself and the Applicant. It was also stated that the Applicant had filed one suit for specific performance of contract against the

defendant before the Cooperative Court, Latur in Case No.172 of 2020 and the defendant has compromised with the Applicant and accordingly, a decree has been passed on 28th September, 2024 in the above case. Therefore, the present suit for specific performance is based on the subsequent transaction that has taken place. Accordingly, he is the affected party as he has stepped into the shoes of the vendor by virtue of the compromise that took place on 28th September 2024. As such, he is necessary party to the suit. The application of Respondent No.2 herein has been allowed vide order dated 25th August, 2025.

4. It is the contention of the learned Advocate for the Petitioner that Respondent No.2 herein is a stranger to the transaction between the Petitioner and Respondent No.1 herein. He is a stranger to the proceedings and the transaction between the Petitioner No.1, because the relief claimed by the Petitioner is that of specific performance of contract and, therefore, Respondent No.2 is a stranger and is not a necessary party. He further submits that it is the prerogative of the Plaintiff and it is his choice as to whom he should add as a party to the proceedings. In support of his submissions, he would rely on the decision of the Hon'ble Supreme Court in the case of ***Gurmit Singh Bhatia V/s. Krian Kant Robinson and others, AIR 2019 SC 3577***, wherein it is held that third party or a stranger cannot be added in a suit for specific performance merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the the suits. It is further observed

and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character. It is his contention that the nature of suit would change if the application for impleadment of Respondent No.2 is allowed.

5. Per contra, the learned Advocate, Mr.Natu appearing for the Applicant, present Respondent No.2 would submits that he has a prior claim in the suit property, particularly in view of the fact that the defendant has executed agreement to sale way back on 3rd November, 2001, in favour of the Applicant after accepting the earnest amount, towards the consideration, the Applicant has also taken possession of the property. According to him, the learned Judge has rightly allowed the application since it would lead to multiplicity of proceedings. He submits that if the Respondent No.2 is not impleaded the decree that would be passed in the suit for specific performance is inconsequential, since the Petitioner would be again required to file a separate suit for delivering possession. Therefore, in order to avoid multiplicity of proceedings and also considering he has right to the suit property by way of agreement to sale, which is executed prior to 25 years in the necessary party in the suit. In support of his submissions, he relies on the Judgment in the case of *Sumatibai and others V/s. Paras Finance Co. regd. Partnership Firm Beawer (Raj.) Throughg Mankanwar (Smt) W/o Parasmal Chorida (Dead) and Others, (2007) 10 SCC 82*, in which the case of *Kasturi V/s. Iyyamperumal, (2005) 6 SCC 733*, which is the three Bench's Judgment decision has

been distinguished and it is held that “it cannot be laid down as a absolute proposition that whenever the suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute.” According to the learned Advocate, the situation contemplated in the aforementioned Judgment squarely applies to the facts fo the present case. Hence, accordingly to him, the order passed below Exhibit-35 by the Joint Civil Judge Senior Division, Latur does not deserve any interference.

6. The learned Advocate, Mr.Rodge, who appears for Respondent No.1 who is the defendant in the suit submits that in fact as according to him he has not executed any agreement to sale either in favour of the Petitioner or in favour of Respondent No.2 and he is still in possession of the property.

7. The Order 1, Rule 10 of the CPC is invoked in the present case, which reads thus :

10. Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that

the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

*(2) **Court may strike out or add parties.** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

*(4) **Where defendant added, plaint to be amended.**-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.*

(5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877), section 22], the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

8. So far as the present case is concerned, it would be governed by Order 1, Rule 10(2) of the CPC, said provision, allows a party to file an application at any stage of the proceedings, making a request to join him as a party to the proceedings, who is a necessary party, but had not been joined, so as to enable to the Court to effectively and completely adjudicate upon, and settle all the question involved in the suit to be

decided. Thus, it is left to the discretion of the Court to adjudicate whether the person making the application is a necessary party for the effective adjudication of the suit. In the present case, the suit is filed for specific performance of contract to execute the sale deed in respect of the property mentioned in title clause, which is also subject matter of the proceedings initiated by Respondent No.2, in which there is compromise arrived between Respondent Nos.1 and 2, herein on 28th September, 2024. These proceedings were initiated much prior to the suit filed by the Petitioner herein bearing RCS No.172 of 2020. Thus, it can not be said that Respondent No.2 is a stranger to the suit. In fact the averments made in the application shows that the agreement to sale in respect of the same property of which the specific performance is sought in the suit has already been executed by Respondent No.1 herein in the year 2001 itself and there is a compromise arrived between the parties. Thus, Respondent No.1 is not a stranger to the transaction which forms subject matter of the suit for specific performance. In fact, for effectively deciding the suit, the impleadment of the applicant is necessary. Even though, the Petitioner has relied in the Judgment *Gurmit Singh Bhatia (Supra)*, wherein it has been laid down that so far as the suit was for specific performance is concerned, if no relief is claimed against the third person, the stranger to the transaction would change the nature of suit and is not a necessary party. These observations were made in the context with the facts that particular case, so far as the facts of the present case are

concerned, the ratio in case of *Sumtibai and Others (Supra)*, as cited by the learned Advocate for Respondent No.2 is squarely applicable. More particularly, Paragraph Nos.9 and 14, which read thus :

9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi v. Iyyamperumal¹. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

14. In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for

cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

9. Since the Petitioner has a prior claim over the property, in view of the agreement to sale over the said property, which is executed 25 years prior to filing a present suit, and the compromise entered with Respondent No.1 about the subject matter of the suit, the learned Judge has rightly allowed the application for impleadment and I do not find any case for interference made out by the Petitioner.

10. In view of the observations, **Writ Petition is dismissed.**

[MANJUSHA DESHPANDE, J.]