IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14160 OF 2018

M/s Om Marg Darshak,
Registered Partnership Firm having it's
registered office at 1st Floor,
Krishna Apartments, Tilak Road,
Abids, Hyderabad-500001 and
having Branch at Plot No.19,
Radha Mohan Colony, Khokadpura,
Aurangabad.
Through it's Partner,
Mr.Pramod Purushottam Mehta,
Age : 57 years, Occupation : Business,
R/o Plot No.19, Radhamohan Colony,
Khokadpura, Aurangabad.

...PETITIONER
(Original Plaintiff)

-VERSUS-

1 Dena Bank,
A banking company having its
Head Office at Dena Corporate Centre,
General Administration Office,
Second Floor, C-10, "G" Block,
Bandra Kurla Complex,
Bandra (East), Mumbai-400051.

Having its branch office at Juna Bazar,
V.K.Market, Pandariba,
Aurangabad-431001.

And/or

Regional Office at Dena Bank,
Nasik Regional Office,
Kawas Arcade, Second Floor,
Shalimar, Nasik-422001.

2 Dena Bank,
General Administration Department,
Regional Office : 398/A,
Madhav Chambers, Senapati Bapat Marg,
Shivajinagar, Pune.

3 Nandkumar Venkatidas Choudhari,
Proprietor of Venkatesh Construction,
Age : 77 years, Occupation : Business,
R/o Flat No.24/25, V.K.Market,
Pandariba, Aurangabad.

....RESPONDENTS
(Nos.1 and 2 : Orig.Defendants
No.3 : Intervenor)

...

Shri S.P.Shah, Advocate for the Petitioner.
Shri K.C.Sant, Advocate for Respondent No.3.

...

CORAM: RAVINDRA V. GHUGE, J.

Reserved on : 06th February, 2019.
Pronounced on : 11th February, 2019.

ORDER :

1 Notice has not been issued to the Dena Bank as the learned Advocate for the Petitioner submits that the Bank is a formal party and has no interest in the issue of addition of a third party to the pending Rent Suit.

2 The Petitioner/ original Plaintiff in Rent Suit No.22/2016, is aggrieved by the order dated 24.08.2018 passed by the Trial Court by which, a third party/ Respondent No.3 herein has been allowed to intervene in the said suit.

3 I have heard the learned Advocates for the respective sides extensively on 23.01.2019, 04.02.2019, 05.02.2019 and 06.02.2019.

4 The suit property are shops adjacent to each other, which were used by Respondent No.1/ Dena Bank as it's branch premises. The Petitioner is the purchaser of the suit premises from the original owner which is Venkatesh Constructions, represented by the third party Respondent No.3 Proprietor. Respondent Nos.1 and 2 is the Dena Bank which was a tenant in the suit property.

5 The original owner / third party applicant is said to have faced financial liabilities. In order to overcome the same, he approached the Petitioner and arrived at an oral agreement to sell, on 05.06.2006. On 07.10.2006, the agreement to sell was registered by the Petitioner and Respondent No.3/ original owner. On 30.11.2006, the sale deed was executed by the original owner and the possession was said to have been handed over to the Petitioner.

6 In the registered agreement to sell, which was executed in between the Petitioner and the original owner, it was mentioned that the purchasers would act as a power of attorney holders for the original owners (six persons who acted through present Respondent No.3 GPA) and the said sale deed would be executed. For the sake of clarity, the salient features of the registered agreement to sell are reproduced verbatim as under :-

"And Whereas the Vendor No.1 firm has been enjoying the said schedule property as absolute owner since the date of completion of construction."

"And whereas the Vendor No.1 has let out the schedule property under sale in favour of one tenant by name Dena Bank by executing a registered Lease Deed dated 06.08.1998 stipulating all the terms of the Lease."

"And whereas the vendor No.1 have also obtained substantial amount as loan from the said Dena Bank by mortgaging the deposit of title/ lease deeds in respect of the schedule property and the said loan now is intended to be re-paid by the vendor No.1 by selling the schedule property."

"And whereas vendor No.1 is looking for prospective buyers who can pay the entire sale consideration amount at one lump sum at the time of agreement so that the loan could be paid to the said Dena Bank and which would facilitate the vendor No.1 to clear off their debts."

"And whereas the vendor No.1 has therefore agreed to sell the said schedule property together with undivided share of land for a total consideration of Rs.50,00,000/- (Rupees Fifty Lakhs Only) in favour of the Purchasers herein provided if the Purchasers are ready and willing to pay the amount of Rs.48,00,000/- at the time of agreement and pay the balance on the date of registration of the sale deed."

"And whereas the vendors hereby declare and state that the terms of the said agreement were originally agreed in a joint meeting held on 5th June 2006 earlier and an oral agreement was arrived at and now the said terms so agreed orally are reduced into writing as agreement of sale cum G.P.A. and as per the said oral agreement of sale the purchasers have paid a sum of Rs.8,00,000/- by way of cash i.e. 4,00,000/- on 5th June 2006 and Rs.4,00,000/- on 10th August, 2006 to the vendor No.1 towards earnest money and part payment of the agreed sale consideration and the vendor No.1 hereby acknowledge the receipt of the said amount and the vendor Nos.2 to 6 also hereby confirm the said factum of payment of earnest money by the purchasers to the vendor No.1/ GPA of 2 to 6 and the balance agreed sale

consideration shall become payable on the date of execution and registration of the regular agreement of sale cum GPA by retaining a sum of Rs.2,00,000/- out of the total sum of Rs.50,00,000/- which shall become payable to the vendors only on the date of registration of the regular sale deed and the Purchasers have agreed for the said schedule of payment, now therefore the vendors and the Purchasers hereby reduce the terms of oral agreement dated 5th June 2006 into writing as under."

"And whereas the vendor Nos.1 to 6 have expressed their inability to find time for the said purpose have agreed not only to register this agreement of sale but they agreed to incorporate the terms of GPA in this agreement itself empowering the purchaser No.2 herein Shri Prakash P. Mehta s/o Purushotham Das Mehta aged about 49 years, R/o Krishna Apartments, Tilak Road, Hyderabad as the lawful power of attorney of vendor Nos.1 to 6 to represent them wherever require and to do or execute all or any of the following acts and deeds and thing in respect of this schedule property and to deal with the schedule property in the manner he likes subject to payment of the balance sale consideration and it is made clear that whatever the rights of the vendors vested in the schedule property are vested in the GPA Sri Prakash P. Mehta and as such the said GPA shall have all the rights and authority to do all or any of the following acts and deeds."

"5. That the vendors herein shall execute and register the regular Sale Deed through their GPA on or before 30th November, 2006 by receiving the balance sale consideration of Rs.2,20,000/- in favour of the purchasers herein or their nominees or assignees and the stamp and the registration charges payable for the said Sale Deed shall be borne by the vendors only or in the alternative, the vendors have since executed this agreement of sale cum GPA it shall be lawful for GPA Shri Prakash P. Mehta s/o Purshotham Das Mehta to execute all the necessary documents and to do all or any of the following acts; and deeds on behalf of the vendor Nos.1 to 6."

"i) To execute and register a regular sale deed in favour of the purchasers herein or their nominees or assignee as

the case may be and it shall be duty of Shri Prakash P. Mehta to take all necessary steps to execute and register the sale deed of schedule property in favour of the purchaser herein or their nominees or assignees without demanding any further amount and taking all necessary steps and taking all necessary clearance and do all necessary works for completing the execution and registration of the sale deed. And after execution of the Sale Deed stated above to present the said sale deed for registration and to sign such documents, declarations, as may be necessary for conveying the schedule property in favour of the purchasers or their nominees or assignees and to take back the said documents after duly registration and hand over the same to the purchasers or his nominees or assignees."

"vi) That there is a tenant in the schedule property the vendor has delivered the constructive position of the schedule property in favour of the purchasers herein and directed the tenants to pay all th rents to the purchasers herein or their nominees or assignees from the date of execution of this deed and it shall be lawful for the said tenants to pay the rents to the Purchasers or his nominees or assignees and the Purchasers or his nominee or assignee shall be entitled to recover the rents from the said tenants by initiating such proceedings as may be necessary if the rents are not paid by the said tenant."

"x) That the vendor Nos.1 to 6 hereby undertake to indemnify the purchasers and keep indemnified at all times and in case the purchasers suffer any loss or deprive of any property or its possession the vendors Nos.1 to 6 shall reimburse of such losses and shall be answerable for all costs and expenses."

"7. That it is agreed that the purchasers shall have an option to undertake to refund an amount of Rs.1,04,160/- to the said M/s Dena Bank on the date when the said deposit amount becomes payable as per the terms of the lease deed at the time of tenant vacating and in such event, the purchasers would be entitled to reimbursement of the said amount of Rs.1,04,160/- by adjusting the said amount from the amount of balance sale consideration of Rs.2,00,000/- that becomes payable on the date of registration of the sale deed and in such event, the

balance sale consideration that become payable is only Rs.95,840/- and not Rs.2,00,000/- as was originally agreed to. The purchasers No.1 and 2 also given an option by the vendors herein to adjust the said amount of Rs.95,840/- and appropriate for themselves without paying any balance sale consideration in the event the vendors Nos.1 become liable to pay any amounts to the purchasers herein on account of any adjustment or on account o any settlement or on account of any other reason or on account of any outstanding that may arise at a later date and the vendor Nos.1 to 6 herein more particularly the vendor No.1 in such event shall not insist for payment of any balance sale consideration and without demanding any balance sale consideration the vendors shall execute and register the regular sale deed whenever demanded by the purchasers either by themselves or through their GPA Shri Prakash P. Mehta without any objection, without any hindrance, without any hurdles and it shall be the lawful right and authority of the purchasers herein or their GPA to demand the vendors herein to execute and register the regular sale deed without paying any further amount and in such event, the General Power of Attorney so appointed under this agreement of sale cum General Power of Attorney who is the purchaser No.2 herein shall have all the rights to execute and register the regular sale deed in favour of the purchaser No.1 herein or any other person or persons so nominated by the purchasers without demanding any further amount and the vendors shall extend full cooperation in executing and registering the regular sale deed in favour of the purchasers or their nominee or assignee without demanding any further amount."

"9. In view of the above, the vendors hereby confirm and deliver the constructive possession of the schedule property in favour of the purchasers herein which is under occupation of the said tenant M/s Dena Bank and it shall be the obligation on part of the said M/s Dena Bank to pay the rents regularly without any interruption from this day and the purchasers shall have a right to receive the rents from today from the said M/s Dena Bank."

"10. That the vendors have further put a proposal to the

purchaser that in case the purchasers desirous of selling the schedule property in favour of any third party, purchasers shall give first option to the vendors herein for re-purchase for such consideration as may be reasonably agreed to by both parties hereto depending on the market fluctuations and the market value for which the purchasers have agreed to sell the said schedule property in favour of the vendors herein in case they desire to sell the schedule property if they so choose at a later stage."

"*11. That it is further agreed that in the event the Purchasers intends to sell the schedule property, they shall intimate the same to the vendors here who shall come forward and offer the price to the purchasers and on such offer, being accepted by the purchasers herein, the purchasers shall execute a registered sale deed in favour of the vendors on receiving the said agreed sale consideration.*"

"*12. That it is further agreed that if the option given to the vendors to re-purchase the schedule property is not accepted and implemented or exercised within one week from the date of its original offer, i.e. 30.11.2006 it shall be lawful for the purchasers herein to sell the schedule property in favour of any third party intending purchasers for such sale consideration as may be fixed by them and the vendors shall not dispute the right of the purchasers and shall not object for the same and the vendors therefore have agreed to execute the GPA authorizing the purchase No.2 Shri Prakash P. Mehta, to execute and register the regular sale deed in favour of the third parties in that event and accordingly, therefore, the vendors have executed this registered agreement of sale cum GPA to enable the purchasers herein to exercise the right of purchasers and also to exercise the right of the vendors to execute and register sale deed in respect of the schedule property and also to receive the sale consideration that may be received by the sale of the schedule property and also to take all such necessary steps that may be required to be taken for effective implementation of the terms agreed.*"

"*13. That the vendors hereby declare and state that they have addressed a letter of attornment to the tenant M/s Dena Bank calling upon the said tenant to pay the rents payable in respect of the schedule property which is under* *their occupation directly to the purchasers herein and the vendors further hereby declare and state that they shall not trouble the tenant and they shall not demand any rents from the said bank from the date of execution of this deed under any circumstances."*

"14. *That the vendors hereby further acknowledge that the D.D. of Rs.40,00,000/- (Rupees Forty Lakhs Only) was received this day towards the balance sale consideration and the same shall be deposited to the credit of their loan account with M/s Dena Bank in account No.T.L./II towards the discharge of the loan amount payable to Dena Bank by the said vendor No.1 and on such deposit of the amount and after adjustment of the said loan amount, the said Dena Bank shall return and release all the original documents of the titles deposited with them if any to the purchasers herein directly for which the vendors shall address a letter to the Bank to hand over the original title deeds or whatever the documents are available to the purchasers herein. It is agreed that said Dena Bank shall continue to pay the rents payable every month for the portion under their occupation to the purchasers hereinafter as if the purchasers are the land lords and the owners of the schedule property by executing a separate document/ confirmation letter. It shall be lawful for the purchasers to retain all such original documents of title and the vendors shall not have rights to claim the said documents or retain the said documents. However, the vendors this day have handed over all the documents of title whatever are in their custody in respect of the schedule property and the purchasers gave a receipt of the same."*

"15. *However it is agreed by the vendors that in case the option is given to the vendors by the purchasers for the sale of the said property at the end of 30.11.2006 under this agreement if the vendors require further time for exercising their option to purchase the schedule property, the vendors have agreed to pay a sum of Rs.4,00,000/- to the purchasers as damage for causing the delay for the purchasers in receiving the amount by sale consideration so that the purchasers can wait for a further period of 3 months to enable the vendors to re purchase the schedule property. If the said option is not exercised within the*

> *said further 3 months period from the said date, i.e. 30.11.2006 the purchasers shall be at liberty to sell the schedule property in favour of the third party and the option given to the vendors shall stand cancelled and deemed to be non existing.*"

7 It is the strenuous contention of the original owner, who has now become a third party applicant seeking intervention in the Rent Suit which application is allowed by the impugned order, that it was never an outright sale between the parties. It was only a money lending transaction. He has continued interest in the property. Financial arrangement cannot be presumed to be an outright sale. Before entering into the agreement to sell, he had put the Respondent Bank into possession of the property as a tenant. Reliance is placed on the judgments delivered in the cases of ***Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya, AIR 2018 SC 490*** and ***Vidur Impex and Traders Private Limited and others vs. Tosh Apartments Private Limited and others, (2012) 8 SCC 384***, to contend that an application for impleadment should be allowed if the addition under Order 1 Rule 10 (1 and 2) is necessary to settle all questions involved.

8 The learned Advocate for the Petitioner submits that the original owner/ third party intervenor has filed an independent suit bearing Special Civil Suit No.66/2017 seeking a declaration that there was no outright sale and that it was a money lending transaction. The said

third party is, therefore, not required to be arrayed as a defendant in the eviction suit. The Dena Bank has already surrendered the possession to the Trial Court and has handed over the keys of the property to the court. Reliance is placed upon the following four judgments :-

(a) ***Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524***.

(b) ***Kasturi vs. Iyyamperumal and others, (2005) 6 SCC 733***.

(c) ***Foolchand Nanhelal Parwar vs. Shabbir Hussain s/o Mulla Akbar Ali Bohra and another, 1998 (1) Mh.L.J. 4291***.

(d) ***Kanaklata Das and others vs. Naba Kumar Das and others, (2018) 2 SCC 352***.

9 Since the suit bearing Special Civil Suit No.66/2017 filed by the third party against the Petitioner is pending, I find it inappropriate to draw any conclusions about the transaction between the Petitioner and the original owner. However, it cannot be ignored that the Petitioner is said to have purchased the property from the original owners by paying them Rs.40 lac, then by depositing Rs.8 lac with the Dena Bank and by adjusting Rs.2 lac towards the expenditure on registration and execution of statutory documents of the agreement to sell. This entire money (Rs.50 lac) is, therefore, received by the original owners and it is not disputed. What is canvassed by the original owners is that it was not an outright

sale. I find from the record that the original documents of the property have also been handed over to the Petitioner purchaser and the loan account is closed.

10 As such, the issue is as to whether, an eviction suit instituted by the Petitioner after he claims to have become the owner of the property, cannot be adjudicated upon without the participation of the third party?

11 In ***Pankajbhai*** (supra), the Honourable Supreme Court has held in paragraphs 14 and 15 as under :-

> "*14. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non- mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper*

party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice. The expression "to settle all questions involved" used in Order 1 Rule 10 (2) of the Code is susceptive to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties. In the matter on hand, since the purchaser of the suit property, i.e., defendant no.7 has expired prior to the filing of the suit, his legal representatives ought to have been arrayed as parties in the suit while presenting the plaint. As such impleadment was not made at the time of filing of the plaint in view of the fact that the plaintiff did not know about the death of the purchaser, he cannot be non-suited merely because of his ignorance of the said fact. To do justice between the parties and as the legal representatives of the purchaser of the suit property are necessary parties, they have to be impleaded under Order 1 Rule 10 of the Code, inasmuch as the application under Order 22 Rule 4 of the Code was not maintainable.

As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22 Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant

No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1 Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs or legal representatives. The difficulty that the High Court experienced in granting the application filed by the plaintiff under Order 1 Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.

15. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. T he legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1 Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial. In view of the above, the impugned judgment of the High Court is set aside. The appeal is allowed. The Trial Court is directed to implead the legal representatives of deceased *defendant no. 7 and bring them on record, subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code, as well as under Section 21 of the Limitation Act, 1963, to be decided during the trial.*"

12 In ***Vidur Impex*** (supra), the Honourable Supreme Court has concluded in paragraphs 28 to 31 as under :-

"*28. We have considered the respective arguments/ submissions. The first question that requires determination is whether the appellants are entitled to be impleaded as parties in Suit No. 425/1993 on the ground that during the pendency of the suit they had purchased the property from respondent No.2. Order 1 Rule 10(2) CPC which empowers the Court to delete or add parties to the suit reads as under:*

"10. (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."

29. In Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay (1992) 2 SCC 524, this Court interpreted the aforesaid provision and held:

"6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record.

The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. 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 but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

30. *In Anil Kumar Singh v. Shivnath Mishra (1995) 3 SCC 147, this Court interpreted Order 1 Rule 10(2) in the following manner:*

"7. By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party- defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

31. *In Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd. (supra), this Court considered the scope of Order 1 Rule 10(2) CPC and observed:*

"13. The general rule in regard to impleadment of parties is that the plaintiff in a

suit, being dominus litis , may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (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."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party .

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the *suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.*

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub- rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice."

13 It is, therefore, obvious that the law on addition of a party is that an addition can be permitted, not only if the said party is necessary or a proper party, but should be such a party in whose absence an effective order cannot be made and whose presence is necessary for a complete and

final decision on all questions involved.

14 In ***Ramesh Hirachand Kundanmal*** (supra), the Honourable Supreme Court relied upon ***Razia Begum vs. Anwar Begum, AIR 1958 SC 886*** and concluded that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the court and it is firmly established on account of judicial pronouncements that a person could be added as a party to the suit, only if he has a direct interest in the subject matter of the litigation, notwithstanding whether, the suit property is a movable or an immovable property. It was further held that the person sought to be added should have direct interest in the suit property as distinguished from commercial interest in the same.

15 It was further held in ***Ramesh Hirachand Kundanmal*** (supra) in paragraphs 13, 14 and 15 as under :-

> "13. *A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.*
>
> *14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has*

relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd., (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A v. Bank of England,(1950) 2 All E.R.611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:- "The test is `May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'."

15. It has been strenuously contended before us that the second respondent has no interest in the subject-matter of the litigation and the presence of the respondent is not required to adjudicate upon the issue involved in the suit or for the purpose of deciding the real matter involved. It is pointed out that the subject-matter in the suit is the notice issued by the Municipal Corporation to the appellant and the issue is whether it is justified or not. The Hindustan Petroleum Corporation Limited is *interested in supporting the Municipal Corporation and sustaining the action taken against the appellant. But that does not amount to any legal interest in the subject-matter in the sense that the order, if any, either in favour of the appellant or against the appellant would be binding on this respondent. It is true that being lessee of the premises, the Hindustan Petroleum corporation Limited has an answer for the action proposed by the Municipal Corporation against the appellant, but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation, it is not necessary for the Court to consider that answer. If that be so, the presence of the respondent cannot be considered as necessary for the purpose of enabling the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The appellant is proceeded against by the municipal Corporation for the alleged action in violation of the municipal laws. The grievance of the respondent against the appellant, if any, could only be for violation of the agreement and that is based on a different cause of action. The consolidation of these two in the same suit is neither contemplated nor permissible.*"

16 In ***Kasturi*** (supra), the Honourable Supreme Court dealt with a suit for specific performance of contract for sale of the property instituted by the purchaser against the vendor. A stranger or a third party to the contract claimed to have an independent title and possession over the contracted property. While doing so, two tests were suggested as in paragraph 11 of the said judgment, which reads as under :-

"*11. As noted hereinearlier, two tests are required to be satisfied to determine the question who is a necessary* *party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker Vs. Small 1834 (40) English Report 848 made the following observations:*

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.""

17 It was, therefore, held in ***Kasturi*** (supra) that the question to be decided was as to whether, the presence of the third parties before the court would be necessary to enable it effectually and completely to adjudicate and settle all the questions involved in the suit. It was then held that if the third parties are added to the suit, the scope of the suit for specific performance of the contract for sale would be enlarged from the suit for specific performance to a suit for title and possession, which is not permissible in law.

18 In ***Kanaklata Das*** (supra), the Honourable Supreme Court dealt with the issue of addition of a party in an eviction suit. It was concluded that in an eviction suit filed by the landlord, it is only the landlord and the tenant, who are necessary parties. The title of the landlord in the eviction suit is not relevant. The landlord is only required to establish two things viz. existence of relationship of the landlord and tenant and the grounds for eviction mentioned under the relevant rent law. It is then concluded that in an eviction suit filed by the landlord against the tenant under the State Rent Act, the title of the property is not being gone into or decided and hence, a third party is not required to be added which is likely to raise the issue of ownership of the tenanted property. The question of title or the extent of the shares held in the suit premises cannot be decided and cannot be made the subject matter of determination in an eviction suit.

19 I find that the above aspects were not brought to the notice of the Trial Court, though the judgment delivered in ***Kanaklata Das*** (supra) was indeed cited. As such, as the issue of ownership or title is not being gone into in an eviction suit and since a separate Special Civil Suit No.66/2017 between the present Petitioner and the earlier owner, who claims addition in the eviction suit, is pending with regard to the sale of the property, the said third party is not required to be added in the rent suit.

20 In view of the above, this Writ Petition is allowed. The impugned order dated 24.08.2018 is, therefore, quashed and set aside. Application Exhibit 20 stands rejected.

kps (**RAVINDRA V. GHUGE, J.**)