

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***WRIT PETITION NO.6188 OF 2017
WITH
CIVIL APPLICATION NO.701 OF 2018***

Nitin Bhimaji Atar & Anr.
V/s.

..Petitioners.

Garden Panorama Co-operative Housing
Society Ltd. & Ors.

..Respondents.

Mr.Gaurav Mehta with Pooja Muni i/b. M/s. Bilawala & Co. for the
petitioners.

Mr.Prashant P.Kulkarni for respondent No.1.

Mr.Rushil Mehta for respondent No.4.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 17, 2019

P.C.:-

Heard respective counsel.

2. Impugned in this petition is the order passed by the Co-operative Court dated March 1, 2017 whereby the application moved by respondent No.4 for impleading him as a party opponent to the dispute came to be allowed. This order was

confirmed in revision preferred by the petitioners before the Co-operative Appellate Court vide order dated April 7, 2017.

3. It is not in dispute that the petitioners and respondent No.4 are members of respondent No.1 Co-operative Society. Both these parties have independently initiated disputes against the Co-operative Society i.e. respondent No.1 in the matter of allocation of parking space.

4. Respondent No.4 has moved an application under sub-section (3) of section 94 of the Co-operative Societies Act, 1960 seeking to add him as party-opponent to the dispute, based on the fact that outcome of the dispute initiated by the petitioners is likely to prejudice his rights. The submissions before the Co-operative Court appears to be that in case if the dispute which is moved by the petitioner is allowed, respondent No.4 will be in difficulty in moving his vehicle in the society premises, including that of parking of the same.

5. Perused both these orders, passed by the Co-operative Court and the Co-operative Appellate Court. The Co-operative Court while granting prayer of respondent No.4 for adding him as party opponent to the dispute in question was sensitive to the fact

that both the parties are litigating on the issue of allocation of parking space.

6. One important fact of which the Co-operative Court as also the Co-operative Appellate Court has lost sight of is, the petitioners and respondent No.4 are not claiming their right to parking for the same space.

7. Apart from above, the fact that at the behest of respondent No.4, a separate dispute is pending before the same Co-operative Court between the same Society, was not appreciated by both these Courts.

8. Considering the scheme of sections 91 and 94 of the Act, in my opinion, respondent No.4, *prima facie* appears to be not a necessary party to the dispute.

9. Learned counsel for the petitioners has rightly placed reliance on the judgment of the Apex Court in the matter of *Kasturi V/s. Iyyamperumal and others*¹, particularly paragraphs 13, 14 and 16 which read thus :-

“13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to

¹ 2005(6) Supreme Court Cases 733

some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

14. *Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos.1 and 4 to 11 are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos.2 and 3. In the case of Anil Kumar Singh Vs. Shivnath Mishra³, reported in 1995(3) SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at paragraph 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:(SCC p. 150)*

"Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute

as to specific performance cannot be determined. Therefore, he is not a necessary party." [Emphasis supplied].

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondent Nos.2 & 3 and Respondent Nos.1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos.1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made herein-earlier, the respondent Nos.1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale."

10. Though, the provisions of the Code of Civil Procedure are not applicable to the proceedings before the Co-operative Court, however, the principles therein can very much be relied upon.

11. In the aforesaid backdrop, both the orders which are impugned in the petition are not sustainable and as such, are liable to be allowed.

12. The petition as such stands allowed in terms of prayer clause (b).

13. In view of the disposal of the petition, the civil application also stands disposed of.

(NITIN W.SAMBRE, J.)