

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 471 OF 2020**

Suresh Shivram Palekar

...Petitioner

*Versus*

The State of Maharashtra Through G.P. &  
Ors.

...Respondents

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Smt. V. V. Thorat i/by Sandeep S. Sharma - Advocate for the  
Petitioner.

Mr. S. L. Babar – AGP for the Respondent No. 1.

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**CORAM : NITIN W. SAMBRE, J.**

**DATE : 11<sup>th</sup> FEBRUARY, 2021.**

**P.C. :**

1. Heard learned Counsel for the Parties. The Petitioner initiated the Suit for declaration, that the agreement for sale dated December 5, 2001 executed by the Respondent Nos. 2 to 6 i.e. Original Defendant Nos. 1 to 5, in favour of Respondent Nos. 7 and 8 i.e. Defendant Nos. 6 and 7, in respect of the Suit Property is bad in the eyes of law, illegal and inoperative. The additional prayer is made in the plaint seeking the decree of the specific performance of contract of agreement of sale and in alternative for damages and injunctions.

2. In the said suit, the Chamber Summons being 2087 of 2016 is taken out for adding the Respondent as Defendant and consequential amendment as per the schedule of the amendment. The said prayer is rejected by the Judge, City Civil Court, Mumbai by impugned order dated 19.03.2016. As such this Petition.

3. The submissions are, the dispute is between the Petitioner and his brother, who happens to be the office bearer of the Housing Society, whose impleadment is sought in the Suit. According to the learned Counsel another suit being 591 of 2016 is pending adjudication against the Corporation and this Court in Appeal from Order being 8292 of 2016 on 23<sup>rd</sup> March, 2016 has passed the following order:-

*“1. Rent after vacating and handing over flat premises for demolishing : Rs. 26,500/- per month.*

*2. Corpus after vacating and handing over flat premises for demolishing Rs. 2,00,000/-. Balance Corpus of Rs. 8,00,000/- during the progress of work.*

*3. As permanent alternate accommodation one flat of carpet area 710-720 sqft. carpet area.*

*In case of Petitioner No. 1 Mr. Suresh Palekar, above similar such payment towards Rent & Corpus and the provision of permanent alternate accommodation can be made to the person in whose favour the Court decides the title/ownership dispute of existing flat No. 19 between Petitioner No. 1 Mr. Suresh Palekar*

*and Mrs. Nirmala Palekar.*

*In case of Petitioner No. 3 Mrs. Rina Chakravaty above similar such payment towards Rent & Corpus and the provision of permanent alternate accommodation can be made to the person in whose favour the Court decides the title/ownership dispute of existing flat no. 21 between Petitioner No. 3 Mrs. Rina Chakravaty and Pramod CHS Ltd.”*

4. The submissions are, the Petitioner-Plaintiff has right in the second property which is subject matter of the Suit No. 6619 of 2004. Since the parties are permitted to be added in the earlier suit No. 591 of 2016 i.e. the Suit against the Corporation, in this Suit also, so as to adjudicate rights of the Petitioner, a Chamber Summons was taken out for impleadment which is erroneously rejected by the learned Trial Court. The apprehension in the light of benefits are claimed by his brother in the property mentioned in the second suit and since the Society has gone in re-development, his claim might be adversely affected. According to her, in view of above, the society is a necessary party to the proceedings.

5. I have considered the said submissions in the light of the order of this Court dated 23<sup>rd</sup> March, 2016, passed in Appeal from Order (ST.) No. 8292 of 2016, the subject matter of the Suit No. 6619 of 2004 and schedule of the amendment.

6. The fact remains that the arrears of rent was ordered to be apportioned in the Appeal against Order dated 23<sup>rd</sup> March, 2016, subject to outcome of the said Suit No. 591 of 2016. As far as the case in hand is concerned, apart from the claim for cancellation of the agreement of sale, what is sought is Specific performance in favour of the Petitioner or in alternate damages. In that view of the matter, the impleadment of the Society as sought to be claimed through the Chamber Summons No. 2087 of 2016 or the schedule of amendment there to, is at all not warranted as the said amendment is not germane to the cause to be decided in the suit. In case the Suit of the Petitioner -Plaintiff is decided either way, it is open for the Petitioner to take out execution of the same against the brother. In that eventuality, the Petitioner can approach Society seeking transfer of the share. However, at this stage directing the impleadment of the Society is not called for, as the said society is not a necessary party to the Suit. Apart from the above, if the claim for damages is decreed, the said decree for damages can be independently executed by the Petitioner against the Judgement debtor therein.

7. In that view of the matter, the reliance placed by the learned Counsel for the Petitioner on the judgment of ***Vardhman Developers Ltd. Vs. Borla Co-operative Hsg. Soc. Ltd., in the year 2014 (2) Bom. C.R. 420*** will not be of any significance.

8. If the Petitioner has not issued notice to the Society under

Section 164 of the Co-operative Societies Act, the Suit in that eventuality, against the Society is maintainable or not, can be an issue to be dwelled upon well only in case if the Society is permitted to be added as party.

9. As far as the plaint is concerned, admittedly against the Society which is sought to be impleaded, no relief is claimed.

10. In that view of the matter, no case for interference in the impugned order is made out. Petition as such fails and stands dismissed.

**(NITIN W. SAMBRE, J.)**