

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13944 OF 2018

Mayur Developers, Sangli
Through Its Partner Sanjay Shivaji
Karande ... Petitioner

V/s.

Ashvini Milind Shah ... Respondent

**WITH
CIVIL APPLICATION NO.1387 OF 2019
IN
WRIT PETITION NO.13944 OF 2018**

Mayur Developers, Sangli
Through Its Partner Sanjay Shivaji
Karande ... Applicant

In the matter between

Mayur Developers, Sangli
Through Its Partner Sanjay Shivaji
Karande ... Applicant

V/s.

Ashvini Milind Shah & Ors. ... Respondents

Mr. Kuldeep U. Nikam with Mr. Om Latpate for the
petitioner/applicant.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

PC.:

1. The petitioner is challenging order passed by the Trial Court allowing the application of third party under Order 1 Rule 10 of

the Civil Procedure Code, 1908 to add him as defendant in a suit for specific performance on the ground that the proposed defendant is subsequent purchaser of the suit property.

2. The petitioner filed Special Civil Suit No.40 of 2012 for specific performance of agreement to sell dated 8 April 2010 and declaration that sale deed dated 5 October 2009 executed on behalf on defendant No.1 through defendant No.10 in favour of defendant No.9 be declared as false, fabricated and unlawful.

3. Moreover, subsequent sale deed dated 4 May 2011 executed by defendant No.1 in favour of defendant No.4 be declared as not binding on the share of the plaintiff.

4. In the said suit, respondent No.1 filed an application under Order 1 Rule 10 of the Civil Procedure Code, 1908, claiming her rights through one Vastupal Shah who in turn purchased the suit property from the husband of defendant No.1.

5. The Trial Court allowed the application on the ground that for deciding the suit effectively and completely and to avoid multiplicity of proceeding respondent No.1 deserves to be added as a party.

6. This Court on 14 March 2023 issued notice to respondent No.1. Office remark dated 6 September 2023 shows that respondent No.1 is duly served. Despite service, respondent No.1 has failed to appear either personally or through advocate. Hence, the petitioner is being decided on merits.

7. Learned advocate for the petitioner relying on the judgment

of the Apex Court in the case of **Gurmit Singh Bhatia vs. Kiran Kant Robinson and Others** reported in (2020) 13 SCC 773, submitted that the position of law in relation to application filed by the plaintiff in a suit for specific performance to add subsequent purchaser as a party to the suit is different from the position in relation to the application filed by subsequent purchaser to add himself as party to the suit for specific performance. It is held that the plaintiff being dominus litis cannot be forced to add parties against whom, he does not want to fight. If he does so, in that case it will be at the risk of plaintiff.

8. Considering the ratio laid down by the Apex Court in the aforesaid case, the petition can be allowed in following terms:

a) The impugned order passed by 5 Joint Civil Judge Senior Division, Sangli in Special Civil Suit No.40 of 2012 below Exhibit-101 dated 4 July 2018 is quashed and set aside.

b) The application below Exhibit-101 in Special Civil Suit No.40 of 2012 is rejected.

9. It is made clear that deletion of Ashvini Milind Shah as party defendant to the suit shall be at the risk of the plaintiff.

(AMIT BORKAR, J.)