

VRJ

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

WRIT PETITION NO.1797 OF 2023

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Oswal Manoj Dongarchand

... Petitioner

V/s.

Vitthal Sabaji Sasar & Ors.

... Respondents

Dr. Uday P. Warunjikar i/by Mr. Siddhesh Pilankar and
Mr. Jenish Jain for the petitioner.

Mr. S. V. Sadavarte for respondent Nos.9 to 12(c).

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 30, 2023

P.C.:

1. The petitioner is challenging order dated 19th October 2022 rejecting application filed by the purchaser *pendente lite* to add him as respondent in the appeal.
2. The respondent Nos.9 to 16 (original plaintiffs) filed Regular Civil Suit No.1696 of 2005 seeking relief of partition and separate possession on 28th November 2005. During pendency of the suit, the respondent Nos.7 and 8 executed a sale deed on 6th January 2010 to the extent of 47 Guntha out of Survey No.21, Hissa No.A/1. The Trial Court, on 30th September 2011, decreed the suit. The defendant Nos.7 and 8 and remaining defendants filed their respective appeals in 2011.
3. During pendency of appeals, the petitioner filed application

to implead himself as respondent in the appeals. The Appellate Court rejected the application by impugned order dated 19th October 2022. The petitioner, has, therefore, challenged the said order by this writ petition.

4. Learned advocate for petitioner relying on judgments in the case of **A. Nawab John and Others vs. V. N. Subramaniam** reported in (2012) 7 SCC 738, **Amit Kumar Shaw and Another vs. Farida Khatoon and Another** reported in (2005) 11 SCC 403, **Chandra Bai (Dead) Through Legal Representatives vs. Khandalwal Vipra Vidyalaya Samiti and Others** reported in (2016) 12 SCC 534 submitted that the application for addition of purchasers' application for impleadment needs to be normally allowed or considered liberally. He submitted that transferee *pendente lite* of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is, therefore, necessary to be impleaded and is entitled to be heard in the matter on merits of the case.

5. Per contra, learned advocate for the respondents relying on judgment in the case of **Vidur Impex and Traders Private Limited and Others vs. Tosh Apartments Private Limited and Others** reported in (2012) 8 SCC 384 submitted that if such application is unduly delayed, the Court will be fully justified in rejecting such application.

6. As rejoinder learned advocate for the petitioner, on instructions, submitted that the apprehension regarding delay which may affect the rights of decree holder can be taken care of

by recording a concession from the petitioner that he will make only oral submissions in support of his case and he shall not apply for filing of pleadings or oral evidence in support of his plea to the extent of share purchased by the petitioner.

7. Therefore, the question arises for consideration is whether in view of such a statement, delay in making an application would be relevant factor to reject the application.

8. The parameters for considering an application under Order 1 Rule 10 of the Civil Procedure Code, 1908, are well settled in view judgment of Supreme Court in the case of **Vidur Impex and Traders Private Limited and Others** (supra), has delineated principles for adjudication of applications under Order 1 Rule 10 of the Civil Procedure Code, 1908, which are as under:-

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be

a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

9. The Apex Court in the case of **Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Others** reported in (2013) 5 SCC 397 **Khemchand Shankar Choudhari vs. Vishnu Hari Patil** reported in (1983) 1 SCC 18 held that the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding. It is observed that any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. Moreover, in the case of **A. Nawab John and Others** (supra), the Apex Court in paragraph No.22, has held as under:

“22. The preponderance of opinion of this Court is that a pendente lite purchaser’s application for impleadment should

normally be allowed or “considered Liberally”.

10. In view of judgment in the case of **Thomson Press (India) Limited** (supra) and **A. Nawab John** (supra) and considering concession made by the petitioner which will ensure that there is no further delay in decision of the appeal, the application of the petitioner permitting him to make oral submission to the extent of his share ought to have been granted by the Appellate Court.

11. Hence, following order:

a) The impugned order dated 19th October 2022 passed by the Ad-hoc District Judge-1, Pune in Regular Civil Appeal No.707 of 2011 below Exhibit-41 is quashed and set aside.

b) The application below Exhibit-41 in Regular Civil Appeal No.707 of 2011 is allowed subject to concession that the petitioner shall be entitled to make oral submission and shall not file any pleadings or request for adducing oral evidence to the extent of property purchased him.

12. The writ petition stands disposed of in above terms. No costs.

13. Learned advocate for the respondents requests for stay of this order. Considering the facts of the case, the effect of the order is stayed for period of four weeks from today.

(AMIT BORKAR, J.)