

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

WRIT PETITION NO.10930 OF 2016

Mohammad Ismail Khan Petitioner

Vs.

Gangubai Dattu Gharat & Ors. Respondents

Mr. Sumit S. Kothari for the Petitioner.

Mr. Krishna K. Holambe Patil a/w Mr. K. R. Pachangane, Mr.
Vishal Shirsat for Respondent Nos.4.1 to 4.5.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th JUNE 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 28/7/2016 passed by the trial Court in Special Civil Suit No.87/2014 rejecting the petitioner's application for impleading the flat purchasers of the newly constructed building in the Suit for specific performance.

3. Learned counsel appearing for the petitioner submits that the petitioner who is the original plaintiff had instituted the suit seeking specific performance of agreement to sale dated

14/1/2011 whereby the defendant-respondent No.1 had agreed to sell her share in the suit property to the petitioner. As there was non fulfillment of the obligation, the suit for specific performance came to be filed. He submits that during pendency of the proceedings the property came to be purchased by respondent Nos.4.1 to 4.5, who constructed a building on the suit property and sold 24 flats to different purchasers. He would submit that in the event the petitioner succeeds in the suit, there will be obstructions to the possession of the plaintiff and therefore it is necessary in the interest of justice to add those 24 flat purchasers at this stage.

4. *Per contra* learned counsel for respondent Nos.4.1 to 4.5 and submits that impleadment of 24 flat purchasers is misconceived in as much as the suit is for specific performance of agreement to sale.

5. Considered the rival submission of the parties.

6. The suit in question i.e. Special Civil Suit No.87/2014 was instituted for specific performance of an agreement to sale executed by defendant No.1 in respect of her share i.e. 600 sq. ft.

out of total 1 H 30 R. Admittedly, what was agreed to be sold by defendant No.1 was her undivided portion. There is no material which is brought on record to demonstrate the area of the building which has been constructed by respondent Nos.4.1 to 4.5. As such in absence of certainty of share of defendant No.1, it cannot be said that the flat purchasers who have purchased the property are transferee *pendente lite*.

7. That apart, it is well settled that in a proceeding for specific performance of the contract, it is only the parties to the contract who are necessary parties. Reliance placed by learned counsel for the petitioner on the decision of the Apex Court in *Amit Kumar Shaw and Anr. vs. Farida Khatoon & Anr., (2005) 11 Supreme Court Cases 403* is misconceived in as much as in the facts of that case the issue was as regard the title to the property and as such the Apex Court had held that the presence of the parties sought to be added is absolutely necessary.

8. In the present case the suit is for specific performance of the contract and alternatively claim for damages/compensation

can well be considered by the trial Court.

9. In that view of the matter, there is no infirmity in the impugned order.

10. The Writ Petition stands dismissed.

SHARMILA U. DESHMUKH, J.