

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION (WP) NO.7911 of 2018**

- 1) Abdul Rauf s/o Mohammad Harun Akhai, aged about 50 years, Occ.: Business, R/o Satranjipura, Nagpur, Tahsil and District Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) Ramesh s/o Lakhiram Motghare, aged about Major, Occ : Business, R/o Near Kabir Math, Jagnath Road, Nagpur.
- 2) Smt. Shabana Anjum W/o Mohd. Ashraf, aged about 52 years, Occ.: Service, Gandhibag, Fawwara Chowk, Nagpur, Tahsil & District Nagpur.
- 3) Smt. Rehamatbee W/o Mohd. Ismail Bhati, aged about 78 years, Occ.: Housewife, R/o Plot No.159, Satnami Nagar, Nagpur.

The petition is dismissed against the respondent No.2 in default vide Registrar (J) Order dt13.09.2019

... Respondent(s)

Shri R.S. Akbani, Advocate for the Petitioner/s
Shri R.S. Kalangiwale, Advocate for the respondent No.1
Shri G.G. Mishra, Advocate for the respondent No.3

**CORAM : ANIL S. KILOR, J.
DATED : 17.07.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.
3. The application moved by the plaintiff for addition of the subsequent purchaser of the suit property to the suit for specific performance as party defendant, came to be rejected vide impugned order dated 20.02.2018, which is the subject matter of the present petition.
4. The respondents are not disputing the fact that during pendency of Special Civil Suit No.1129 of 2010 filed by the plaintiff for Specific performance of contract, a sale deed was executed on 27.06.2012 in favour of the respondent No.3 and therefore, the plaintiff moved an application saying that though *lis pendens* will apply, for just and fair adjudication of the matter, the respondent No.3 is a necessary party and accordingly, prayed for impleading him as party-defendant.

5. One of the objects of Order I Rule 10 of the CPC is to avoid multiplicity of proceeding.

6. A necessary party is the party in absence of him, no effective order can be passed, whereas a proper party is the person in absence of whom, effective order can be passed but his presence is necessary for deciding the issues involved in the suit.

7. Thus, considering the object and the settled law as regards who is a necessary party and who is a proper party, I am of the opinion that though the petitioner is not the necessary party, he is the proper party. Moreover, his application under Order I Rule 10 of the CPC needs to be allowed to avoid multiplicity of proceeding.

In the circumstances, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The order below Exh.18 dated 20.02.2018 passed by Civil Judge Senior Division, Nagpur in Special Civil Suit No.1129 of 2010, is hereby quashed and set aside.

(iii) The application Exh.18 for addition of party, is hereby allowed.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]