

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13114 OF 2024

Omprakash Shrikrishna Somani

Age : 63 Years, Occupation : Business,
Residing at : Plot No.26, Mangalmurti
Society, B – Cabin Road, Ambernath (E),
District : Thane.

**...Petitioner
(Original Plaintiff)**

VERSUS

1. **Gobind Jiandmal Ahuja**
Age : 63 Years, Occupation : Business,
Residing at : Malika Mehal, Flat No.404,
Section 30, Ulhasnagar – 3,
District : Thane.
2. **Manju Kamal Nagdev**
Age : Adult, Occupation : Business
3. **Deepak Kamal Nagdev**
Age : Adult, Occupation : Business
4. **Heena Deepak Nagdev**
Age : Adult, Occupation : Business,

Respondent Nos.2 to 4 residing at:-
Nagdev Bhavan, Block No.C-672,
Room No.1344, Behind Kalani Society,
Section – 25, Ulhasanagar – 4.
5. **Prakash Lakhimchand Sachdev**
Age : Adult, Occupation : Business
6. **Anup Prakash Sachdev**
Age : Adult, Occupation : Business,
7. **Nilesh Prakash Sachdev**
Age : Adult, Occupation : Business,

Digitally signed
by SATISH
RAMCHANDRA
SANGAR
Date:
2025.01.02
09:46:18
+0530

SATISH
RAMCHANDRA
SANGAR

Respondent Nos.5 to 7 residing at:- ...**Respondents**
 Flat No.102, Twin Complex, (**Original Defendant Nos.1 to 4**
 Ulhasnagar – 421 004. **and Proposed Defendant Nos.5 to 7)**

Mr.Sarvesh Deshpande a/w Mr.Pratik Sabrad, Mr.Amey Sawant, Mr.Prathamesh Deshpande i/b. Mr.Suresh M. Sabrad:-	Advocates for Petitioner.
Ms.Dharwanti V. Khatri i/b. Mr.Bharat V. Bhatia:-	Advocate for Respondent Nos.2 to 4.
Mr.Raj Chandwani:-	Advocate for Respondent Nos.5 to 7.

CORAM : S. M. MODAK, J.

DATE : 28th NOVEMBER 2024

P. C. :-

1. Heard learned Advocate for the Petitioner – Plaintiff and learned Advocate for the Respondent Nos.2 to 4 and the learned Advocate for Respondent Nos.5 to 7.
2. In a pending suit for specific performance of the Agreement in between the Plaintiff and the Defendant No.1, the Defendant Nos.2 to 4 (Defendant Nos.1 to 4 are the original Defendants) have sold the suit property to the proposed Defendant Nos.5 to 7 on the basis of sale-deed dated 31st March 2021 and on the basis of the said cause of action, the Plaintiffs have filed two Applications before the trial Court. They are:-

- (a) One is, for adding the proposed Respondent Nos.5 to 7 as party Defendants and
- (b) second is, for making necessary averment. This was filed as per the provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908 (“CPC”).

Both were rejected by the trial Court as per the order dated 24th July 2023. It is challenged by the Plaintiff.

3. The Defendant Nos.2 to 4 have purchased the said property from the Defendant No.1. There are two aspects. First, the reasoning given by the trial Court while rejecting those Applications and second, the submissions advanced before me on behalf of the Defendant Nos.2 to 4 and on behalf of the proposed Defendant Nos.5 to 7. The reasoning given by the trial Court is not acceptable.

4. What the trial Court has observed is:-

“The proposed Defendants are not parties to the Agreement in respect of which, the Plaintiff has filed a specific performance suit.”

It cannot be disputed. The trial Court observed:-

“The Court is expected to adjudicate the questions involved in between the parties to the suit Agreement”.

That is how, the trial Court has interpreted the meaning of ‘*lis*’. This may be true when the suit was filed but if there is a subsequent

development relating to the suit property the word ‘lis’ cannot be interpreted in a limited manner.

5. The Application as per the provisions of Order I, Rule 10 of CPC has to be dealt with by considering twin tests laid down. The Plaintiff cannot join a person who is a stranger to the dispute. A person can be a proper party, when relief cannot be granted in his absence. Because for granting of certain orders, the concerned party must be present before the Court. Secondly, a party need to be joined, if he is a necessary party. It is interpreted as the party whose presence is required for effective and complete adjudication of the questions involved.

6. The Plaintiff may succeed or may not be succeed. If the Plaintiff will succeed in the suit, there has to be a specific performance decree. It can be by asking the Defendants to execute a sale-deed in favour of the Plaintiff. An execution of a sale-deed implies transfer of property as contemplated under Section 54 of the Transfer of Property Act, 1882 (“TP Act”). There has to be a transfer of an ownership. If, these proposed Defendants are not party before the Court and if, there is a decree, the Defendant Nos.1 to 4 can simply execute a conveyance but they cannot transfer the title because the title has already passed on two proposed Defendants. Such a decree can only be a paper decree and

even if, such a decree is passed, it cannot be executed. Because, the proposed Defendants can object to the same being passed without hearing them. That is why, there is a test of not only ‘*complete*’ but an “*effective adjudication*”.

7. It is settled law that the merits of the amendment cannot be considered while deciding the amendment Application. It is true that the trial has commenced. If, the amendment is sought on the basis of new cause of action, then the first part of Order VI, Rule 17 of CPC is applicable. The submissions that “*there was only Memorandum of Understanding (“MoU”) in between the Plaintiff and the Defendant No.1 mentioning thereby there was no Agreement for Sale*”, **is a submission relating to the merits which can be gone into when the suit will be decided.** A submission that “*the proposed Defendants have purchased the property prior to carrying out mutation*” can be agitated before the trial Court and it is a question of merits. A submission that “*the Defendant Nos.2 to 4 have not disclosed to the proposed Defendants about pendency of lis*” cannot be a ground for opposing the amendment.

8. Learned Advocate for the proposed Defendants relied upon the observations in case of *Begum Suraiya Rashid V/s. Begum Mehr Taj*

Nawab Sajeda Sultan Lrs....¹. My attention is invited to Para Nos.19 and Para No.21. The facts are different. The impleadment was not allowed because the transfer took place inspite of an injunction order. Herein, it is submitted that the temporary injunction Application was dismissed and submission is also made that “*the Plaintiff is unnecessarily keeping the suit alive, so that, the property will remain in dispute*”, can be taken as a ground while opposing the suit and by showing to the Court, a dishonest conduct of the Plaintiff, if any.

9. The trial Court overlooked one fact. Two applications are filed not by proposed Defendants but by Plaintiff only. He is a *dominus litis*.

10. A reliance is also placed on the observations in case of **Balram Singh V/s. Kelo Devi**². There is an observation about filing of a suit on the basis of an unregistered Agreement to Sell. Such Agreement was held inadmissible in evidence.

11. It is true that an Agreement for Sale does not create any right, title and interest as per Section 54 of the TP Act but that can be a subject matter for specific performance suit. Hence, all the contentions raised on behalf of the Respondents are rejected. In view of that, following order is passed:-

1 First Appeal No.296 of 2000 : 22nd March 2022 : Madhya Pradesh High Court

2 Civil Appeal No.6733 of 2022 : 23rd September 2022 : Supreme Court of India

ORDER

- (i) Writ Petition is allowed.
 - (ii) The order dated 24th June 2024 passed by the Court of Civil Judge Senior Division – Kalyan below Exhibit-86 and Exhibit-87 in Special Civil Suit No.32 of 2010 is set aside.
 - (iii) The Application for amendment of the plaint and for joining the proposed Defendant Nos.5 to 7 is allowed.
 - (iv) All sorts of amendment be made in the plaint within three (3) weeks from today.
 - (v) The Respondent Nos.5 to 7 assure that his clients will appear in that suit *suo motu*.
 - (vi) The amended copy of the plaint be served on the original Defendants and subsequently added Defendants.
 - (vii) All are at liberty to file written statement and additional written statement.
 - (viii) The trial Court is at liberty to recast the issues.
12. In view of the above, **Writ Petition stands disposed of.**

[S. M. MODAK, J.]