



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12427 OF 2023

1. Pusha w/o. Kalyanrao Bawne
Age : 67 years, Occ. : Agriculturist,
R/o. : Masla, Tq. & Dist. Latur

PETITIONER
(Ori. Plaintiff)

VERSUS

1. The State of Maharashtra
Through Latur District Colloector,
Collector Officer, Barshi Road, Latur
2. Zilla Parishad, Latur,
Through its Chief Executive Officer,
Zilla Parishad, Barshi Road, Latur
3. The Executive Engineer,
Maharashtra State, Rural Road Development,
Association Ganga Niwas, near Panchwati
Hanuman, Ekmat Chowk, Latur
4. Kakasaheb s/o. Vishwanath Dhumal,
Age : 52 years, Occ. : Agriculturist,
R/o. : Masla, Tq. & Dist. Latur

RESPONDENTS
(Ori. Defendants)

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Mr. P.P. More – Advocate for Petitioner
Mr. R.B. Dhaware – AGP for Respondent Nos.1 and 3, State
Mr. U.B. Bondar – Advocate for Respondent No.2
Mr. Amit S. Deshpande – Advocate for Respondent No.4

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 03.12.2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties,

the petition is heard finally at the stage of admission.

2. Heard learned Counsel – Mr. P.P. More for the petitioner, learned A.G.P for respondent Nos.1 and 3, State authorities, learned Counsel – Mr. U.B. Bondar – for respondent No.2 and learned Counsel – Mr. Amit Deshpande for respondent No.4 at length.

3. The petitioner challenges the order dated 23.09.2022 passed by the Jt. Civil Judge, Senior Division, Latur, whereby the application below Exhibit 74 in R.C.S. No.527 of 2018 came to be allowed.

4. Learned Counsel for the petitioner vehemently submits that the respondent No.4 had filed an application under Order I Rule 10(2) of the Code of Civil Procedure, wherein he has not claimed any relief against the petitioner, but only with a view to defeat the claim of the petitioner, the application was filed. He further submits that respondent No.4 wants to settle his own interest about the joint measurement, as the joint measurement was carried out prior to ten (10) years and he now wants to reopen the said issue on the ground that it was never carried out. Therefore, by filing this application, he wants to settle his own right in the suit filed by the petitioner.

5. He further pointed out that in another suit (R.C.S. No.526/2018) wherein the adjacent owner had filed a suit against the State Government, the Zilla Parishad, Latur and Executive Engineer, M.S.R.D.C.

Present respondent No.4 did not approach the Court and the suit was decreed and no any grievance was raised earlier by respondent No.4.

Respondent No.4 has now filed an application for adding him as party – defendant to the suit filed by the petitioner. He further points out that as no relief is claimed by petitioner against respondent No.4. The learned Trial Court ought not to have allowed the application.

6. I have heard learned A.G.P and learned Counsel for the respective respondents.

7. The suit was filed for recovery of possession and perpetual injunction wherein relief is sought against the Zilla Parishad. The respondent No.4, who is from the same village, has filed an application with a prayer that, considering the allegations raised in the suit, he was a necessary party. The contents of paragraphs 5, 6 and 7 of the application filed by respondent No.4 before the Trial Court, which read as under :

“5. That, in fact Gadhwad-Masla-Bhisewagholi road was in existence from decades and was and is in existence as it was. The said road was construed in 1972 with-out any acquisition proceeding. To take the undue advantage of this fact plaintiff has filed the present suit by managing the Govt. authorities. The alleged encroached portion under road is part of road since 1972 up-till now. Plaintiff has not availed any legal remedy within limitation.

6. That, recently plaintiff had tried to dug the existing road

under the pretext of so called alleged encroachment and by obtaining injunction order dated 11.09.2021. On that, day the villages as well as the present applicant came to know about pendency of present suit. Immediately the villagers made representation before the Govt. authorities but no one had paid attention towards the illegal and overt act of plaintiff.

7. That, the plaintiff is trying to encroach and close in part the existing public road under the pretext of so called false and illegal measurement and malafide representations. Therefore to decide the alleged issues presence of this third party is required as the valuable civil rights of the immovable property are vested in the present suit. Therefore the suit can-not be decided in absence of present third party. So by allowing the application third party may kindly be added as party defendant to the present suit and the opportunity may kindly be granted to defend the suit for fair trial.”

8. The Hon’ble Apex Court in the case of **JN Real Estate Vs. Shailendra Pradhan and Ors.** reported in 2025 INSC 611, wherein it is held in paragraphs 22 to 32, which read as under :

“**22.** This Court in Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., reported in (2010) 7 SCC 417, explained the scope of Order I Rule 10(2) of the CPC. In the unique facts which existed therein, there was a likelihood that the appellant would secure a right/interest in the suit property if the suit for specific performance instituted by the respondent against the Airport Authority of India was dismissed. It was held, that in such a factual circumstance and such being the right asserted by the appellant, it cannot be made a party to

the suit for specific performance. While holding so, it was observed that although the general rule is that the plaintiff, being dominus litis, may choose the persons against whom he wishes to litigate and seek relief, yet this rule of impleadment would be subject to the provisions of Order I Rule 10(2) wherein courts are vested with the discretion to strike out or add parties to a suit depending on whether their impleadment is deemed necessary or proper. It was held that, even in suits for specific performance, a court may, at any stage of the proceedings, implead a person who is found to be a necessary party or proper party.

23. In *Mumbai International Airport (supra)*, this Court explained the import of the expressions “necessary party” and “proper party” as thus:

“14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a

person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.” (Emphasis supplied)

24. It is limpid in the aforesaid observation that if a party is found to either a necessary or proper party, the court would have the jurisdiction to implead him, even against the wishes of the plaintiff concerned. In *Mumbai International Airport (supra)* another pertinent question that arose was whether there existed any conflict between the three-judge bench decision of this Court in *Kasturi v. Iyyamperumal*, reported in (2005) 6 SCC 733 and the decision of a two-judge bench in *Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*, reported in (2007) 10 SCC 82.

25. In *Kasturi (supra)*, the respondent nos. 1 and 4 to 11 respectively therein, based their claim to be added as party defendants on an independent title and possession of the contracted property. In such a backdrop, while rejecting the applications for impleadment, this Court had expounded the scope of Order I Rule 10(2) CPC and laid down certain tests for determining whether a person is a ‘necessary party’ for the purpose of impleadment in a suit for specific performance as follows:

(i) First, that a bare reading of Order I Rule 10(2) clearly indicates that the necessary parties in a suit for specific performance of a contract for sale or an agreement to sell, are the parties to the contract or, if they are dead, their legal

representatives, as also persons who had purchased the contracted property from the vendor. A subsequent purchaser would be a necessary party since his rights would be affected irrespective of whether he had purchased the contracted property, with or without notice of the contract. However, it was clarified that a person whose claim is adverse to the claim of a vendor, is not a 'necessary party'. Therefore, two tests were laid down by this Court, which must be satisfied for determining the question as to who is a necessary party —

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. The relevant observations read as under :

“7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.” (Emphasis supplied)

(ii) Secondly, as regards the meaning of “proper party”, it was observed that in case of a suit for specific performance, the guiding principle for deciding who is a proper party is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the agreement to sell. Such a question has to be decided while

keeping in mind the scope of the suit for specific performance. If the addition of that party enlarges the scope of such suit so as to convert it into a suit for title, then the presence of such a party cannot be said to be necessary for the effective adjudication of the controversies involved in the suit. The relevant observations read as under:

“11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker v. Small [(1834) 40 ER 848 : 3 My & Cr 63] made the following observations: (ER pp. 850-51)

‘It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant

had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.’

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13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

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15. [...] In the case of *Vijay Pratap v. Sambhu Saran Sinha* [(1996) 10 SCC 53] this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. [...]” (Emphasis supplied)

(iii) Thirdly, an intervenor seeking to be impleaded must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the agreement to sell. It was held that a person is considered to be legally interested in the answers to the controversy, only if he can satisfy the court that it may lead to a result that would legally affect him. The relevant observations read as under:

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“17. [...] Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in

the suit for specific performance of the contract for sale. In *Amon v. Raphael Tuck and Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357 : (1956) 2 WLR 372] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally.” (Emphasis supplied)

26. However, this Court, in its subsequent decision in *Sumtibai* (*supra*), was faced with a factual scenario wherein the sons of the original defendant were also *prima facie* found to be co-owners of the contracted property. The sons were already impleaded in their capacity of being legal representatives to the deceased defendant who had entered into an agreement to sell in favour of the plaintiff therein. In this background, it was observed that it cannot be laid down as an absolute proposition that in a suit for specific performance, a third party can never be impleaded. It was opined that the decision of this court in *Kasturi* (*supra*) must be seen in the context in which it was delivered. Furthermore, some circumstantial flexibility is necessary to be taken into account in each case, since an additional or different fact may materially change the conclusion. Therefore, the sons of the original defendant were allowed to file an additional written statement and take the defence of co-ownership which was available to them.

27. While distinguishing *Kasturi* (*supra*), it was held in *Sumtibai* (*supra*) that if a third party can show a fair semblance of title or interest, he can file an application for impleadment in the suit for specific performance. The relevant observations read thus:

“13. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584-85, paras 9-

12)

‘9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 (HL)] (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D) [...]’

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14. In view of the aforesaid decisions we are of the opinion that *Kasturi* case [(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.” (Emphasis supplied)

28. This Court in *Mumbai International Airport* (supra) was also of the view that different situations require the application of different facets of Order I Rule 10(2) and consequently, held that there was no conflict between the decisions of this Court in *Kasturi* (supra) and *Sumtibai* (supra). It was reiterated that that Order I Rule 10(2) CPC did not pertain to the ‘right’ of a non-

party to be impleaded as a party but deals with the ‘judicial discretion’ of the court to strike out or add parties at any stage of the proceeding. In exercising this judicial discretion, courts must act according to reason and fair play and not according to whims and caprice.

29. It was observed that the court may exercise discretion in impleading a person who is a ‘proper party’ upon an application by a non-party to the suit for specific performance. If the court is of the view that the impleadment of such a proper party will alter the nature of the suit or introduce a new cause of action, it may either refuse to implead such person or order for his impleadment on certain conditions. However, even otherwise, the court would not be precluded from impleading a ‘proper party’ unconditionally in its discretion. The relevant observations rendered in *Mumbai International Airport* (supra) read thus: “24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P

representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”
(Emphasis supplied)

30. Having discussed the aforesaid position of law, it would be apposite to look into the reasoning which was adopted by the High Court in its impugned decisions. It appears from the line of reasoning that the High Court entertained a serious doubt on the genuineness of the entire transaction between one (Late) Mr.

Sameer Ghosh i.e., original defendant no. 3 and the appellant herein i.e., original defendant No.8. (Late) Mr. Sameer Ghosh is said to have obtained a probate on the strength of one particular will and on the strength of that probate he is said to have executed first, an agreement of sale in favour of the original defendant no. 8 and thereafter, a sale deed with respect to the suit property. According to the High Court, this transaction is doubtful. The High Court has gone further to say that the documents i.e., the agreement and the sale deed are also doubtful.

31. In such circumstances referred to above, the High Court thought fit to take the view that the appellant herein is neither a necessary party nor a proper party.

32. Having regard to the material on record, we are of the view that the High Court should not have interfered with the order passed by the Trial Court impleading the original defendant no. 8 (appellant herein) as one of the defendants in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, 1950. We say so because the genuineness of the transaction, if any, including the genuineness of the documents is to be looked into in the course of the trial. A party who is seeking impleadment may not be a necessary party but still, could be termed as a proper party. There is a fine distinction between a necessary party and a proper party. A necessary party is a person in whose absence no effective decree could be passed at all by the court. Whereas a proper party is one who though not a necessary party is a person whose presence would enable the court to effectively and adequately adjudicate upon all matters in dispute in the suit.

9. In the reply filed by the petitioner on application below Exhibit 74, she has specifically mentioned in paragraph 3, which reads as under :

“3. The suit filed by plaintiff in respect of his own land. Present applicant not having any title, interest to resist the claim of plaintiff. Present applicant is neither necessary nor proper party in the present proceeding. If applicant having any apprehension of his so called land then he can choose proper remedy by due course of law but this application is filed only to harass the plaintiff and to prolong the matter. Applicant has knowledge of present proceeding since institution of suit but he was mute spectator of the proceeding and now when he apprehended that justice will be done with plaintiff very soon by Hon’ble court by this application for prolong the proceeding. Such type of attempts should not be protected by Hon’ble Court. That, in the GP there were various proceeding took place regarding the construction of road and its obstruction. Present applicant was attended said meeting and in the said meeting present matter was discussed at length, hence, considering all above facts and circumstances application filed by applicant is not tenable in the eyes of laws hence deserves to be rejected with cost.”

10. The learned Trial Court, while considering the application below Exhibit 74, has recorded the findings particularly in paragraphs 6 and 7, which read as under :

6. Heard, admittedly suit is filed by plaintiff for his own property and claiming possession and perpetual injunction

against the State on the ground of alleged encroachment. However, at the same time, in Para – 7 it is specifically stated that, at the time of measurement carried out in the year 2014, found that land owners of Gat No.88 encroached on the road to the extent of 07R, Gat No.89 05R, Gat No.90 04R, Gat No.91 02R. It appears that, applicant from the same village, stating that plaintiff pleaded in plaint about the alleged encroachment by above land owners over the road. If it so, plaintiff has specifically filed this suit for recovery of possession against the State of the alleged encroachment over his property i.e. defendants have constructed the road by encroachment. Then naturally road is passing through towards eastern side of Gadhwad–Masla–Bhise–Wagholi constructed 10 years ago. In the event of plaintiff succeeds, it would not be feasible only to hand over the encroachment portion of the road to the plaintiff and the alleged encroachment portion of the road to the plaintiff and the alleged encroachment as pleaded in the plaint by other owners, would be kept as it is. The situation would be unexecutable.

7. In view of above discussion, as applicant if from the same village, plaintiff has pleaded in plaint of the alleged encroachment by other Gat owners. Moreover, say of plaintiff also discloses that, applicant is from the same village and allegation that he has encroached over the road. By order of injunction in this matter, applicant is being restrained for his wrong. This fact also supports the applicant's stand. In this peculiar circumstances, applicant becomes necessary party for adjudication of suit. However, from the say of plaintiff, it appears that applicant was present before the Gram Panchayat regarding the proceeding, got the knowledge of this suit. No

justification given by applicant for delay to file this application.

Hence, application is liable to be allowed subject to cost.

Considering the observations made by the Hon'ble Apex Court in the case of JN Real Estate (*supra*), respondent No.4 has made out a case before the learned Trial Court, that respondent No.4 is a proper party to just a decision of the suit and therefore, the learned Trial Court has rightly allowed the application.

11. Considering the issue involved in the present petition, respondent No.4 is a necessary party to decide the controversy involved in the suit and it is for the learned Trial Court to consider matter on its own merits. Merely because an application is filed by respondent No.4 was allowed that itself does not affect the merits of the suit. Therefore, the apprehension of the petitioner cannot be sustained. As the learned Trial Court granted relief in favour of respondent No.4 after considering the evidence and record available, I do not find any reason to interfere with the order dated 23.09.2022 passed below Exhibit 74 by the Jt. Civil Judge, Senior Division, Latur in R.C.S. No.527/2018, under Article 226 of the Constitution of India. Hence, pass following order :

ORDER

- (a) The Writ Petition is dismissed.
- (b) No order as to costs.

- (c) Pending civil applications, if any, also stand disposed of.
- (d) Considering that the suit is of the year 2008, the learned Trial Court is directed to decide the same within a period of nine (9) months from today.

[SIDDHESHWAR S. THOMBRE]
JUDGE

Pooja Kale/