



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6320 OF 2022

M/s. R. C. Builders and Developers,
Shop NO. 3, Sai Shraddha, Phase-II,
Ashokvan, Dhahisar(East), Mumbai-400068
Through its Partner

1. Chunnilal S/o. Karsanbhai Pithawa
Age : 57 years, Occ. : Business,
R/o. B-303, Panchshil Residency,
Mahavit Nagar, Kandewali (W)
Mumbai-67.
2. Ramchandra S/o. Govindrao Salunke
Age : 51 years, Occ. : Business,
R/o. B-201, Ekta Bhumi,
Mahavir Nagar, Kandewali (W)
Mumbai-67.

... PETITIONERS

...VERSUS...

1. Jitendra S/o. Tukaram Jadhav
Age : 50 years, Occ. : Business,
R/o. Jijamata Nagar,
Khandgaon Road, Latur.
2. Prathamesh Apartment
Flat Owners Co-operative Housing
Society Ltd., Latur
Through its Chairman
(Authorized person)
Ramesh S/o. Kashinathrao Gaikwad,
Age : 53 years, Occ. : Service,
R/o. Prathamesh Apartment,
Flat No. 201, 2nd Floor, Vishal Nagar,
Latur, Tq. & Dist. Latur.

... RESPONDENTS

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- Mr. T. M. Venjane, Advocate for the Petitioners
 - Mr. S. B. Bhapkar, Advocate for Respondent No. 2
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CORAM : ROHIT W. JOSHI, J.
DATE : JULY 29, 2025

ORAL JUDGMENT:

1. The present petitioners are the plaintiffs in Special Civil Suit No. 131/2017, filed for possession of suit property which comprises of flat no. 01, situated on the ground floor of the building known as *Prathamesh Apartment*, situated at Vishal Nagar, Latur. Respondent No. 1, who is the sole defendant in the suit, is alleged to be in unauthorized possession of the said suit flat.

2. In this suit, *Prathamesh Apartment Flat Owners Co-operative Housing Society, Latur* (hereinafter referred to as 'the Society'), filed an application under Order 1 Rule 3 of the Civil Procedure Code (CPC) for adding itself as a party defendant to the suit. This application, marked as Exhibit 96, was allowed by the learned Trial Court vide order dated 17.03.2022.

3. The applicant Society contended that the suit flat no. 01 and seven shops have been constructed illegally without any permission in the area that was earmarked for parking of the apartment owners of the building. The learned Trial Court has allowed the Society's

application, observing that, having regard to the allegations made by the applicant – Society in the application, the Society ought to be added as a party.

4. Mr. Venjane, the learned advocate for the petitioners – original plaintiffs, contends that having regard to the nature of the suit and the prayers made therein, the applicant - Society (respondent no. 2 in the present petition) is neither a necessary party nor a proper party to the suit. He contends that the learned Trial Court has completely misdirected itself in allowing the application of Society.

5. Per contra, Mr. Bhapkar, the learned counsel for respondent no. 2 – Society contends that since the petitioners – original plaintiffs have carried out illegal construction in the portion earmarked for parking in the apartment scheme, the co-operative society of apartment owners is a necessary party to the suit.

6. The suit is one for possession, where the plaintiffs allege that the original defendant no. 1 is in unlawful possession of the suit flat. The plaintiffs claim ownership of the said flat. The contention of the applicant - Society/respondent no. 2 is that the construction of the suit flat is unauthorized.

7. However, having regard to the prayers made in the plaint, the Court finds that the Society is neither a necessary party nor a proper party to the suit. The rights of Society are not affected by outcome of the suit. Needless to mention that the petitioner is *dominus litis* and has right to determine who should be parties to the suit. A person cannot be thrust as a defendant in a suit against wish of plaintiff, unless he is a necessary party. A necessary party is a person in whose absence no effective decree can be passed in the suit. In the present case, having regard to the prayers in the suit, the applicant - Society is not a necessary party.

8. In view of the above, the order dated 17.03.2022 passed by the learned 3rd Joint Civil Judge, Senior Division, Latur, on the application at Exhibit 96 in Special Civil Suit No. 131 of 2017, is quashed, and the said application at Exhibit 96 is rejected.

9. However, it is clarified that it will be open for respondent no. 2 – the Society to take appropriate steps against the petitioners or any other person in respect of the alleged unauthorized construction carried out in the building. The adjudication of the present suit will not affect the rights of Prathamaesh Apartment Flat Owners Co-operative Housing Society Limited or any other apartment owners. In the event

that any suit is filed or the proceeding is initiated or complaint is made by respondent no. 2 - Society or any of its members, with respect to unauthorised construction the same shall be decided on its own merits and in accordance with law. Any findings recorded by the learned Trial Court in the present suit will not operate as *res judicata* in such suit or other proceedings that may be initiated either of the Society or any of its members.

10. The writ petition is disposed of accordingly.

[ROHIT W. JOSHI, J.]