

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13982 OF 2023
WITH
WRIT PETITION NO. 13979 OF 2023
WITH
WRIT PETITION NO. 9560 OF 2023

Nemichand s/o Bankatlal Bakliwal,
Died through L.Rs.

1. Jitendrakumar s/o Nemichand Bakliwal
Age-53 yrs, Occ- Agri & Business,
R/o- Barki Chowk, Nanded,
Tq. & Dist- Nanded.
2. Ganesh s/o Nemichand Bakliwal,
Age-41 yrs, Occ- Agri & Business,
R/o- "Nirmal Bhavan", Bagwan Galli,
Sarafa, Nanded, Tq, & Dist- Nanded. ..Petitioners

VERSUS

1. The State of Maharashtra,
Through District Collector, Nanded,
Tq. & Dist- Nanded.
2. The Tahsildar,
Tahsil Office, Chikhalwadi, Nanded,
Tq & Dist- Nanded.
3. Md. Rafiq s/o Ab. Shukur,
Age-42 yrs, Occ- Social Service,
R/o- Magdum Nagar, Nanded,
Tq & Dist- Nanded. ..Respondents

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Advocate for the Petitioners : Mr. S.P. Katneshwarkar
AGP for Respondent/State : Mr. V.S. Badakh
Advocate for Respondent No.3 in WP/13982/2023, WP/9560/2023 &
for Respondent No.4 in WP/13979/2023 : Mr. S.V. Dixit

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 04, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties at the stage of admission.

2. In Writ Petition N.13979 of 2023 and 13982 of 2023, the petitioners are assailing the orders dated 04.09.2023 passed below Exhibit-42 in R.C.S. No.387 of 2020 and Exhibit-46 in R.C.S. No.368 of 2020 respectively. In Writ Petition No.9560 of 2023, the petitioners are assailing the order dated 20.06.2023 passed below Exhibit-34 in R.C.S. No.366 of 2020 by the learned Joint Civil Judge, Senior Division, Nanded whereby the application filed by third party for adding him as a party defendant came to be allowed.

3. Learned counsel for the petitioners submits that third party was not concerned with the issue involved. In fact in the suit, no relief is claimed against respondent no.3 and therefore, the application ought not to have been considered by the learned Trial Court. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in the matter of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay*** reported in ***1992 (2) SCC 524***, particularly on para 14 which reads as under :

14. IT cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined

*must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England*, that their true test lies not so much in an analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:*

"THE test is May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

4. Learned counsel for the petitioners also relied on the judgment of Hon'ble Supreme Court in the matter of ***Sidhamayee***

Pattnaik Vs. Bibhu Prasad Sahoo reported in ***AIR 2022 SC 4304***, particularly on para 5 which reads as under :

“5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the domus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

5. As far as third petition is concerned i.e. Writ Petition No.9560 of 2023, the application Exhibit-34 was filed for addition of the party though the said application was filed seeking amendment.

6. I have considered the submissions advanced by the learned counsel for the petitioners. Here, one thing is required to be noted that inquiry was initiated pursuant to the application filed by respondent no.3 regarding some manipulation of the record and even there are allegations by respondent no.3 that the municipal authorities are hand in gloves with the revenue authorities, who

support the plaintiff. The plaintiff instituted a suit after entire inquiry was conducted against him by Collector pursuant to the application and therefore, to do just decision of the case on merit, presence of respondent no.3 was required. As this issue pertains to revenue record and though no relief is claimed against respondent no.3, I find that the learned Trial Court while considering the application had not committed any apparent error. The learned Trial Court while considering the application has specifically observed in para 10 as under :

“10. After having gone through the rival contentions this Court has gone through the plaint. Upon having gone through the plaint it reveals that the suit is filed for declaration of ownership and possession and for issuance of perpetual and mandatory injunction. This Court do find substance in the contention raised by plaintiffs that the third party applicant is neither having nexus with the Bakliwal family nor he is having nexus with the suit property. However, from the perusal of the contentions in the application it appears that a committee was constituted by the District Magistrate. In the committee report there are certain findings against plaintiffs. The report of the committee is annexed along with the present application. Even though the third party applicant is found to have no nexus either with the suit property or with the Bakliwal family. However, the material rights of plaintiffs in the present suit are going to be determined. The right of ownership is going to be decided. That right of ownership must not be decided based on false documents. According to this Court the addition of the present third party applicant will assist the Court in deciding the controversy between the parties. There can be better

administration of justice. If the documents filed by plaintiffs are genuine, then plaintiffs will cause no prejudice and they will be able to get verdict in their favour.”

7. 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 intervenor 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.

8. Considering the observations made by the Hon'ble Apex Court in the case of JN Real Estate (*supra*) and after considering the observations and findings recorded by the learned Trial Court while allowing the application, I do not find any perversity in the orders passed by the learned Trial Court. Therefore, I am not inclined to interfere with the orders dated 04.09.2023 passed below Exhibit-46 in R.C.S. No.368 of 2020, Exhibit-42 in R.C.S. No.387 of 2020 and order dated 20.06.2023 passed below Exhibit-34 in R.C.S. No.366 of 2022 by the learned Joint Civil Judge, Senior Division, Nanded Court under Article 227 of the Constitution of India. Hence, I proceed to pass the following order :

ORDER

- (I) All Writ Petitions are dismissed. No order as to costs.
- (II) Rule is discharged.

(SIDDHESHWAR S. THOMBRE, J.)