

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4934 OF 2025**

Atul Vijakant Mug

..Petitioner

Versus

Sulochana B Dinde & Ors

...Respondents

Mr. Vivek V Salunkhe, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 21st APRIL 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an order dated 4th January 2025 passed by the Civil Judge, Senior Division, Kolhapur, whereby an application preferred by the Petitioner to implead him as a party-Defendant in a Suit instituted by Respondent No.1 for declaration that the purported Will of the brother-in-law of Respondent No.1 is not legal and valid and on the strength of the said Will, the Defendant thereto has no right, title and interest in the suit property, came to be rejected.
- 3.** The said Suit was instituted in the year 2002. It appears that the Defendant-Petitioner acquired interest in the suit property pursuant to an alienation made by Defendant No.9 under a Sale Deed dated 19th

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March 2020, whereby the suit property bearing Block No. 15/1 was professed to be conveyed to the Petitioner.

4. The Petitioner filed an application seeking impleadment.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application opining that, the subsequent transferee is not entitled to be impleaded as party-Defendant to the Suit as a matter of right. Since the alienation has taken place during the pendency of the Suit, the principle of *lis pendens* would apply.

6. In any event, the Petitioner has instituted a Suit, being RCS No. 683 of 2023, against Respondent No.1-Plaintiff in RCS No. 262 of 2002, and others, seeking injunctive reliefs. Therefore the impleadment of the Petitioner as party-Defendant to the suit was not necessary for a complete and effectual adjudication of the Suit.

7. Mr. Salunkhe, the learned Counsel for the Petitioner, submitted that though the Petitioner cannot be said to be a necessary or proper party and entitled to be impleaded as party-Defendant to the Suit under the provisions of Order 1 Rule 10 of the Code of Civil Procedure 1908 (“the Code”), yet, since there has been a devolution of interest during the pendency of the Suit, the Petitioner is entitled to be impleaded as party under the provisions of Order 22 Rule 10 of the Code. To lend support to this submission, Mr. Salunkhe placed reliance on a decision of the Supreme Court in the case of **Thomson Press (India) Limited Vs**

Nanak Builders And Investors Private Limited & Ors.¹ Mr. Salunkhe further submitted that though the decision in the aforesaid case was rendered in a proceeding arising out of a Suit for specific performance, yet, the principle enunciated therein has a general application.

8. Evidently, the Petitioner has no direct interest in the subject matter of the suit which is for declaration with regard to the legality and validity of the Will purportedly executed by the brother-in-law of the Plaintiff. Incontrovertibly, the Petitioner claims to have acquired interest in the suit property pursuant to a Sale Deed executed during the pendency of the Suit on 19th March 2020. It is well recognized that addition of a party is not a matter of initial jurisdiction but that of judicial discretion.

9. In the Suit which has been instituted by Respondent No.1 seeking declaration as regards the purported Will executed by the brother-in-law of the Respondent, the Petitioner is neither a necessary nor a proper party. So far as the submissions of Mr. Salunkhe that, the provisions contained in Order 22 Rule 10 can be resorted in a situation of this nature, it would be suffice to note that the alienation in the teeth of the pendency of Suit cannot be sought to be overcome by seeking impleadment under Order 22 Rule 10 of the Code.

10. In any event since the Petitioner, on the strength of the instrument executed in his favour, has instituted an independent suit,

¹ (2013) 5 SCC 397.

albeit for injunction against the Plaintiff in Suit No. RCS No. 262 of 2002, the Petitioner can very well seek the reliefs to protect his interest in the said Suit. The Petitioner will have to workout his remedies in the independent suit.

11. The learned Civil Judge, thus, cannot be said to have committed any error in declining to implead the Petitioner as a party-Defendant to the Suit.

12. The Petition thus stands dismissed.

[N. J. JAMADAR, J.]