

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
APPEAL FROM ORDER NO.347 OF 2024
WITH
INTERIM APPLICATION NO.8368 OF 2024
WITH
INTERIM APPLICATION NO.962 OF 2024**

Bharat Petroleum Corporation Ltd.
A fully owned Government
Company Registered under the
Companies Act 1956 having its
registered office at Bharat Bhavan 4
& 6, Currimbhoy road, Ballard
Estate, Mumbai-400 001.

..Appellant
(Original Plaintiff)

Versus

1. Sudhakar Shanbhag,
Radha Kunj, Daulat Nagar, Satara 415 001.
2. Ashoka Sthapatya Private Limited,
Through Authorised
Representative Sanjay Kantilal Sawant
Age: 62 years, Occu.: Building Contractor,
Address: Yashwant Nagar, Akluj Tal. Malshiras
Dist. Solapur.

..Respondents

(Respondent No.1 is Orig. Defendant)

...

Ms. Kritika Sheti a/w Changdev Shingade, Advocate for Appellant.
Mr. Shubham Shinde a/w Mr. Vaibhav Gaikwar, Advocate for
Respondent No.1.
Mr. Surel Shah, Senior Advocate i/by Mr. Shailesh D. Chavan, Advocate
for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th SEPTEMBER, 2025.**

FINAL ORDER:-

1. The present Appeal is filed impugning order dated 20.04.2023
passed below Exhibit-24 by District Judge at Satara in Regular Civil

Appeal No.71/2015, by which application filed by respondent no.2 for his addition as party in Regular Civil Suit No.493/2000 has been allowed.

2. The decree passed in Regular Civil Suit No.493/2000 by Civil Judge Senior Division is subject matter of Appeal before learned District Judge at Satara. The respondent no.1 is original defendant in suit. The respondent no.2 acquired title over part of suit property from respondent no.1 during pendency of Appeal filed against decree passed in Regular Civil Suit No.493/2000. The appellant had instituted suit for extension of lease period, which is decreed against respondent no.1. The respondent no.2 filed application below Exhibit-18 seeking his impleadment as appellant no.2 in terms of Order XXII Rule 10 of Code of Civil Procedure. The appellant/original plaintiff filed pursis Exhibit-21 and gave no objection for impleadment as prayed. Eventually, application Exhibit-18 was allowed and respondent no.2 herein has been added as appellant no.2 in Regular Civil Appeal No.71/2015.

3. The respondent no.2 filed another application below Exhibit-24 praying for his addition as defendant in Regular Civil Suit No.493/2000 in terms of Order XXII Rule 10 of Code of Civil Procedure. The appellant had objected application on ground that respondent no.2 acquired interest in suit property on 14.11.2017 after disposal of suit, thus he cannot be added as party in original suit. The learned District Judge relying upon exposition of law by Supreme

Court of India in cases of *Amit Kumar Shaw and Another Vs. Farida Khatoon and Another*¹ and *Siddhi Promoters Vs. Anita Krishnarao Shirolkar @ Janaki Vikas Morey & Ors.*² allowed application directing addition of respondent no.2 as defendant in suit.

4. Ms. Kritika Sheti, learned Advocate appearing for appellant vehemently submits that Order XXII Rule 10 of Code of Civil Procedure permits an assignee of interest in suit property, during pendency of suit, to be permitted to participate in proceedings by leave of Court. However, assignee, who acquired interest in suit property after disposal of suit would not get any right of impleadment in suit. According to her, learned District Judge misinterpreted exposition of law by Supreme Court in cases of *Amit Kumar Shaw and Another* (supra) and *Siddhi Promoters* (supra).

5. Per contra, Mr. Surel Shah, learned Senior Advocate appearing for respondent invites attention of this Court to sub-clause (2) of Section 107 of Code of Civil Procedure and submits that Appellate Court holds same powers and duties as are conferred on Courts of original jurisdiction in respect of suits instituted therein. Therefore, Appellate Court can permit addition of party, particularly assignee of interest in suit.

¹ (2005) 11 SCC 403.

² 2018 (2) All MR 324.

6. Before considering rival contentions, it is necessary to refer to Rule 10 of Order XXII of Code of Civil Procedure, which reads thus:

“Order XXII

Rule-10:- **Procedure in case of assignment before final order in suit.-**

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

7. The provision embodied in Rule 10 enables Court to permit assignee or person upon whom interest in suit property is devolved to continue proceeding or participate in proceeding. In present case, it is not in disputed that in pursuance to sale deed dated 14.11.2017, respondent no.2 acquired right, title and interest in suit property and decree passed in suit would bind him. It cannot be disputed that Appeal is continuation of original proceeding in suit and assignee of interest in suit property would step into shoes of his vendor. At this stage, it cannot be disputed that respondent no.2 being transferee *pendente lite* acquired substantial interest in subject matter of suit and he would be interested in litigation and would step into shoes of defendant. In such a case, in terms of Order XXII Rule 10 of Code of Civil Procedure alienee *pendente lite* would be entitled for addition as party in proceeding to enable him to protect his interest. As such, he is

entitled to be impleaded in suit or other proceeding where his predecessor in interest is made party to litigation.

8. As rightly pointed out by Mr. Surel Shah, learned Senior Advocate, Appellate Court is bestowed with all powers of Trial Court and can pass necessary orders in terms of sub-clause (2) of Section 107 of Code of Civil Procedure. Although language of Rule 10 of Order XXII uses word suit, as long as decree does not attain finality, assignee of interest of original party would be entitled to participate in proceeding and represent his transferee. It is true that, he would carry forward case of his transferee and would not be entitled to take inconsistent plea to the stand taken by his transfer. Pertinently, appellant had no objection for addition of respondent no.2 as party in Appeal. However, objection is raised for his addition in suit. In fact, once party is permitted to be added in Appeal, his addition shall relate back to original proceeding. Therefore, no prejudice is caused to appellant as consequence of addition of respondent no.2, as defendant in suit in pursuance to impugned order. In result, Appeal sans merit. Hence, dismissed.

9. In view of dismissal of Appeal from Order, pending Interim Applications also stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE