

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14910 OF 2024

M/s. Adhya Properties and ors.

...Petitioners

Versus

Balu alias Balasaheb Balurao Jadhav and
ors.

...Respondents

Mr. R. A. Thorat, Senior Advocate, a/w Suryajeet Chavan, for
the Petitioners.

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**CORAM: N. J. JAMADAR, J.
DATED: 15th JANUARY, 2025**

ORDER:-

1. Heard the learned Counsel for the petitioners.
2. The petitioners - defendants call in question the legality, propriety and correctness of an order passed by the learned Civil Judge, Pune, on an application (Exhibit-79) dated 10th July, 2024, whereby the said application for amendment in the plaint and impleadment of the defendants by invoking the provisions contained in Order VI Rule 17 and Order I Rule 10(2) of the Code of Civil Procedure, 1908, came to be allowed.
3. The plaintiffs/owners of the subject property executed Development Agreement and Power of Attorney for

development of the subject property in favour of the petitioners – defendants, on 3rd January, 2013. A suit, being Special Civil Suit No.989 of 2023, came to be instituted by respondent Nos.1 to 23, seeking a declaration that the Development Agreement and the Power of Attorney were void, not binding on the plaintiffs and the defendants are liable to deliver 50% of the constructed area to the plaintiffs in accordance with the revised building permission and compensation for the delay in payment of the amount of consideration and constructed portion in accordance with the terms of the Development Agreement.

4. The plaintiffs filed an application for amendment in the plaint asserting, *inter alia*, that after the institution of the suit, the plaintiffs obtained the documents including the sanctioned plans which indicate that the defendants have obtained permission for additional construction. The defendants have also executed instruments in favour of the third parties without allotting the portion agreed to be delivered to the plaintiffs under the Development Agreement, without the consent and behind the back of the plaintiffs. Therefore, those subsequent purchasers were required to be

impleaded as party defendants to the suit to avoid multiplicity of the proceedings.

5. By the impugned order, the learned Judge was persuaded to allow the application observing that the defendants have admitted that 19,700 sq. ft. building area to be delivered to the plaintiffs in C, D and E Wing has yet not been earmarked in accordance with the clause 11(A1) and 11(A2) of the Development Agreement. Yet, in breach of the said stipulation, defendant Nos.1 to 5 created third party interest in favour of the proposed defendant Nos. 6 to 34. It is, therefore, necessary to implead them as party defendants.

6. Mr. Thorat, the learned Counsel for the petitioners – defendants, submitted that as the plaint came to be amended at a pre-trial stage, the order permitting amendment in the plaint, may not be susceptible to a serious challenge. However, the impugned order suffers from a grave error in law as the trial court has not at all adverted to the consideration which should weigh with the Court in impleading the proposed defendants as the party defendants to the suit. The learned Judge has not at all embarked upon an inquiry as to whether the proposed defendants are either necessary or proper parties and are required to be impleaded as party

defendants to the suit. To this extent, in the least, the impugned order warrants interference.

7. I have perused the material on record and given careful consideration to the aforesaid submissions. The execution of the Development Agreement and the terms thereof, appeared to be, by and large, incontestible. The fact that in accordance with the terms of the Development Agreement certain cash component and constructed portion were agreed to be paid/delivered to the plaintiffs/owners of the land can hardly be put in contest. From the perusal of the material on record, especially, the Development Agreement, it becomes evident that the parties had agreed that after the plans were sanctioned by the planning authority, the constructed portion to be allotted to the owners would be finalized and thereafter, the parties would be free to dispose of the constructed portions falling to their respective shares. It was the stand of the defendants that despite communication, the plaintiffs did not co-operate in earmarking the constructed portions to be allotted to the plaintiffs and, thereupon, the defendants have disposed of the portions of the developed area by executing instruments.

8. It is in the aforesaid backdrop, the learned Civil Judge has recorded a tentative view that the defendants committed breach of the Development Agreement and created the third party rights. The proposed defendants were thus necessary parties to the suit.

9. Since third party rights have been indisputably created in favour of the proposed defendants, the presence of the proposed defendants is indispensable for a complete and effective adjudication of all the disputes between the parties. *Prima facie* it appears the proposed defendants have a direct interest in the dispute in question in contradistinction to a commercial interest. Any decree passed in the suit is likely to affect the rights of the proposed defendants. In fact, no effective decree can be passed in the absence of the proposed defendants.

10. The learned Civil Judge has applied the correct test and allowed the application by passing the impugned order. No interference is thus warranted in the impugned order.

11. Petition, thus, stands dismissed.

[N. J. JAMADAR, J.]