

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5457 OF 2025

Padmanabha Narayan Poonja And Anr ..Petitioners
Versus
Vrushali Vileen Mangeshkar & Ors ...Respondents

Adv. Sushma Mishra, with Munir Ahmed, for the Petitioner.
Adv J. M. Joshi, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED : 30th APRIL 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 27th February 2025 passed by the learned Civil Judge, Senior Division, Thane, whereby an Application preferred by the Petitioners to implead one Mr. Liyakat Shaikh, the proposed party-Defendant to the Suit, came to be rejected.
3. The Petitioners-Plaintiffs have instituted a Suit for specific performance of an oral Agreement for Sale of immovable property, dated 25th May 2008. The Defendants appeared and contested the Suit. Issues were settled and at the stage of recording of evidence the

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Plaintiffs filed an Application for impleadment of the said Liyakat Shaikh as a party-Defendant to the Suit with the assertion that, the said person was the facilitator of the whole transaction. One Vasant, the predecessor-in-title of the Defendants, had approached the Plaintiff along with the proposed Defendant, and induced the Plaintiffs to enter into the transaction. When the Plaintiffs visited the Suit site, the Plaintiffs found that the said person is in possession of the Suit property. There were certain financial transactions between the deceased predecessor-in-title of the Defendants and the proposed Defendant. Therefore, it is necessary to implead the proposed Defendant as a party-Defendant to the Suit.

4. By the impugned order dated 27th February 2025, the learned Civil Judge was persuaded to reject the said Application observing that, the person proposed to be added as a Defendant has no concern with the Suit property. He is neither a necessary, nor a property party.

5. The learned Counsel for the Petitioners submitted that the Trial Court committed an error in rejecting the Application for impleadment of the proposed Defendant. The said person is a confirming party to the documents executed between the parties to the Suit. The said person is in possession of the Suit property. He has no objection to implead him as a party-Defendant to the Suit. In the event the Decree for specific

performance is passed, the Plaintiffs would not be able to execute the Decree as the proposed Defendant is in possession of the Suit property.

6. I am unable to persuade myself to agree with the submissions of the learned Counsel for the Petitioner. Evidently, the Suit is for specific performance of the contract. There is no privity of contract between the the Plaintiffs and the proposed Defendant. Nor the proposed Defendant is claiming under a party to the Contract. In the Application it is categorically asserted that the proposed Defendant was the facilitator of the transaction between the parties. Moreover, the learned Counsel for the Respondents invited attention of the Court to a list of witnesses filed on behalf of the Petitioners in which the proposed Defendant was shown as a witness for the Plaintiffs. The proposed Defendant is a complete stranger to the suit for specific performance.

7. The legal position with regard to the impleadment of a party in a Suit for specific performance is well-settled. A person who claims independent right in the Suit property cannot be impleaded as a party-Defendant in a Suit for specific performance. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Kasturi Vs Iyyamperumal & Ors.**¹

8. The learned Civil Judge was thus fully justified in observing that, the proposed Defendant is neither a necessary nor property party to the Suit. No interference is warranted in exercise of supervisory jurisdiction.

¹ (2005) 6 SCC 733.

9. Petition dismissed.

[N. J. JAMADAR, J.]