



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3957 OF 2022

1. Sachin Maroti Burile, aged about 33 years, oc. Agriculturist, r/o Khanji Ward, Warora, Tq. Warora, District Chandrapur.
2. Mahesh Chandrakant Popat, aged about Major, occ. Agriculturist, r/o Hanuman Ward, Warora, Tq. Warora, Dist. Chandrapur.

... APPELLANT

VERSUS

1. Rajaram Shankarrao Kunkule aged about 64 years, occ. Agriculturist, r/o Tilak Ward, Warora, Tq. Warora, Dist. Chandrapur.

(Amendment carried out as per order dated 30.09.2022.)
2. Vasantrao Shankar Kunkule, aged about 70 years, Occ. Agriculturist, r/o Warkhawadi, Tq. Wai, District Satara.
3. M/s Ahatashyam & Sadiq Ali, through its partner, Ahatashyam Sadakat Ali aged about 45 years, Occ. Business, r/o Abhayankar Ward, Warora, Tq. Warora, dist. Chandrapur.
4. Sadiq Sadakat Ali, aged about 39 yers, Occ. Business, r/o Abhyankar Ward, Warora, Tq. Warora, Dist. Chandrapur.
5. Sunil Narayan Warkhede, aged about 45 years, Occ. Business, r/o Sardar Patel Ward, Warora, Tq. Warora, Dist.

Chandrapur.

... RESPONDENTS

Shri Madhur A. Deo, Advocate for the Petitioners.

Shri V.B. Bhise, Advocate for respondent no. 1

Respondent no. 2 served.

Shri Yash A. Kullarwar, Advocate for respondent nos.3 to 5.

CORAM : PRAVIN S. PATIL, J.

CLOSED ON : 24.09.2025.

PRONOUNCED ON : 07.10.2025.

JUDGMENT :

1. The prime challenge in the appeal by the appellants is to the order dated 05.12.2024 by which the learned Trial Court has rejected the amendment for addition of party in the pending suit. In the present appeal, the entire controversy arose due to wrong survey number mentioned by the appellant in his original plaint. According to the appellant he has entered for agreement of sale of survey no.284 however it was wrongly mentioned in the plaint as survey no.287/A. The petitioner, therefore moved the application for amendment to the plaint to correct the survey number. The said amendment application was rejected by the learned Trial Court. Against the same the appellant has filed the Writ Petition No.3956 of 2022 before this Court. This Court remanded back the matter to the Trial Court to decide afresh the amendment application. The learned Trial Court by its order dated

30.07.2023 allowed the amendment application and permitted to the plaintiff to correct the survey number. It is seen from the record that earlier the application for amendment to add the name of subsequent purchasers was moved. But at relevant time, application for amendment was not allowed, therefore, by recording reason that survey number in the suit being different, rejected the application by order dated 07.04.2022.

2. It is further seen from the record that after the amendment was allowed to correct the survey number, the petitioner has again filed the application for addition of party under order I Rule 10 of Code of Civil Procedure stating that as the suit is properly amended and survey no.284 is now included instead of survey no. 287/A. The said application is rejected by order dated 05.12.2024. Hence the present petition filed before this Court.

3. Respondent no.3 and 4 contested the present petition stating that they are the *bona fide* purchaser of the suit property and therefore, they are not necessary party to the present proceeding. Hence, they stated that Trial Court has rightly rejected the application filed by the petitioners for addition of party.

4. I have heard both the learned Counsel at some length and

considered their submission as well as perused the case laws on which both the learned Counsel has placed reliance to substantiate their claim.

5. It is admitted fact on record that respondent no.1 sold out the suit property to respondent no.5 on 01.08.2017, and thereafter, respondent no.5 sold out the same to respondent no.3 and 4. Accordingly, respondent nos. 3 and 4 are now in the possession of the suit property.

6. It is the submission of the petitioners that once the amendment is granted, the matter gets relate back to cause of action to which the suit was filed. Hence, once the amendment is allowed, the petitioner is always at liberty to place on record the subsequent transaction taken place in respect of suit property and to decide the suit in proper manner and therefore, they are necessary party to the suit. The petitioners have relied upon the judgment of the Hon'ble Supreme Court in the case of *Maharaj Singh and ors. vs. Karan Singh (dead) thr. Legal Representatives and ors. (2024) 8 SCC 83*, particularly on paragraph 24, which read thus :

“24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement

can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona-fide purchasers without the notice of the original contract. When, in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessity to pray for the cancellation of the subsequent sale deeds.”

Hence, according to the petitioners the subsequent purchasers are the necessary party to the suit.

7. On the other hand, learned Counsel for the respondent nos. 3 and 4 relied upon the judgment of the Hon’ble Supreme Court in the case of ***Kasturi vs. Iyyamperumal and ors. (2005) 6 SCC 733***, and particularly on paragraph 7 of the said judgment, which reads thus :

“7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly shows 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.”

8. In the present matter it is not disputed that respondent nos. 1 and 2 on 21.01.2011 sold the entire survey no.287/A to Aditya Developers. So they were in possession and owner of survey no.284 after year 2011.

9. It is admitted fact of the matter that, plaintiffs have filed suit for specific performance of contract in the month of March, 2017. At that time, in the civil suit filed by the petitioners, survey number was recorded as 287/A instead of 284, however boundaries of the survey number were recorded correctly.

10. After filing of the suit, respondent no.1 executed the sale deed of the suit property in favour of respondent no.5 on 01.08.2017. In the sale deed normally the boundaries of the property are recorded. Therefore, it cannot be said that respondent no.1 was not aware about pendency of suit but without disclosing the same he has executed the sale deed in favour of respondent no.5.

11. Respondent no.5 then executed the sale deed in favour of respondent nos. 3 and 4 on 20.02.2019. It is admitted fact that, the suit property which was the subject matter of the suit, was sold during the pendency of the civil suit. Therefore, those subsequent event are necessary to brought on record.

12. At this stage, it can't be decided whether respondent nos.3 and 4 are bona fide purchaser or not. Same will be decided after conducting full trial in the matter. Respondent nos.3 and 4 may be the bona fide purchaser of survey no.284 from respondent no.5. But same is required to be proved during the course of trial by respondent nos. 3 and 4 in the matter.

13. Merely because they are not related to the agreement of sale executed between the petitioners and respondent no.1, cannot be said to be a reason to not implead them as a necessary party to suit. On the contrary, as they have purchased the suit property and in possession of the same, according to me they are the necessary party to the proceedings.

14. According to me, the law laid down by the Hon'ble Supreme Court in the case of Maharaj Singh (supra) is applicable in the matter. The final judgment of the suit will have bearing on the

transaction taken place during pendency of suit. Therefore, in that view of the matter, respondent nos. 3 to 5 are the necessary party to the suit.

15. Hence, I am of the opinion that the Trial Court has committed an error by rejecting the application for addition of party by orders dated 07.04.2022 as well 05.12.2024. Hence, I proceed to pass following order :

- (a) The Writ Petition is allowed.
- (b) Impugned orders dated 07.04.2022 below Exhibit 27 and order dated 05.12.2024 below Exhibit 47 in Special Civil Suit No.08/2017 are hereby quashed and set aside.
- (c) The application filed by the petitioner for addition of party under Order 1 Rule 10 of the Code of Civil Procedure Exhibit 47, is hereby allowed.
- (d) The respondent nos. 3 to 5 be added as party defendants in Special Civil Suit No.08/2017. It is made clear that the learned trial court shall not get influenced by the observations made in this Judgment while deciding the Special Civil Suit No.08/2017.

Corrected as
per Court's
order dated
08.10.2025

16. The Writ Petition stands disposed of. No order as to costs.

(PRAVIN S. PATIL, J.)

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