IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.366 OF 2026

shriniwas Rama Kulkarni and Ors. ... Petitioners
versus
Mahesh Nivrutti Gawali and Ors. … Respondents

Mr. Rupesh R. Lanjekar, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 13 JANUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioners.

2. The challenge in this Petition is to an order dated 18 December 2025 passed by the learned Civil Judge, Kalyan, whereby the application preferred by Respondent Nos.21 to 42 to implead them as party Defendants to the suit, under the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, came to be allowed.

3. The Petitioners – Plaintiffs claimed to be the owners of the property bearing old Survey No.170, new Survey No.102, Hissa No.16, admeasuring 940 sq. mtrs., situated at Shivaji Nagar, Thakurli, Taluka Kalyan, Dist. Thane (the suit property). Mahesh Nivrutti Gawali (R1) – Defendant No.1, allegedly committed encroachment over the suit property and illegally constructed ‘Mahesh Gawali Chawl’ thereon. Respondent Nos.2 to 20 – original Defendant Nos.2 to 20 were alleged to be the trespassers and illegal

occupants or tenants of Respondent No.1. Despite repeated demands and notices, Defendant Nos.1 to 20 did not vacate the suit property. Hence, a suit for declaration that the Plaintiffs are the owners of the suit property; Defendants had committed illegal encroachment over the suit property and, they were the trespassers, and, thus, consequential reliefs of a decree for possession of the suit property and perpetual injunction.

4. Respondent Nos.21 to 42 claimed that, in fact, they are in possession and occupation of the various rooms and/or portions of the suit property. The Plaintiffs have instituted the suit in collusion with the persons, who are not at all in the possession of the suit property. Therefore, Respondent Nos.21 to 42 filed an application for their impleadment as party Defendants to the said suit. Voluminous documents were annexed to the said application to demonstrate that the Respondent Nos.21 to 42 were in actual and physical possession of the portions of the suit property.

5. The Plaintiffs resisted the application.

6. By the impugned order, the learned Civil Judge was persuaded to allow the application recording, inter alia, that the Respondent Nos.21 to 42 – third party applicants, had placed on record documents which, prima facie, indicated that those Respondents were in the occupation of the portions of Mahesh Gawali Chawl. The Plaintiffs were seeking declaration of title qua, and possession of, the suit property, which appeared to be prima facie in the

occupation and possession of the applicants therein, and, therefore, those applicants were necessary parties to the suit. Lest, there would be impediments in the execution of the decree that may be eventually passed.

7. Being aggrieved, the Plaintiffs have approached this Court.

8. Mr. Lanjekar, learned Counsel for the Petitioners, submitted that the Plaintiffs being dominus litis could not have been forced to litigate against Respondent Nos.21 to 42, who are neither necessary nor the proper parties. There is no privity of contract between the Plaintiffs and Respondent Nos.21 to 42. Nor there is material to substantiate the claim of those Respondents that they are in the occupation of the portions of the suit property. In any event, if a decree to deliver vacant and peaceful possession is passed, Respondent Nos.21 to 42 could raise objection to the executability of the decree on the ground that it does not bind them. However, at this stage, there was no propriety in impleading the Respondent Nos.21 to 42 as party Defendants.

9. To lend support to this submission, Mr. Lanjekar placed reliance on the judgment of the Supreme Court in the case of **NAK Engineering Company Pvt. Ltd. V/s. Tarun Keshrichand Shah and Ors.**[1], wherein it was enunciated that the Plaintiffs being the dominus litis, it was for them to choose their adversaries. If they do not array the proper and necessary parties to the

1 2026 SCC Online SC 4

suit, they do it at their own risk. However, they cannot be compelled to add a party to defend a suit against their wishes.

10. The legal position in regard to the addition of the party is absolutely clear. Addition or deletion of a party is not a matter of initial jurisdiction, but that of exercise of judicial discretion. The distinction between necessary and proper party is also well marked. In the case of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Ors.**[2], the Supreme Court has enunciated that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need to be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the Plaintiff.

11. When a party seeks impleadment in the suit, the said party must have a direct interest in the subject matter of the suit in contradistinction to commercial interest. (Ramesh Hirachand Kundanmal V/s. Municipal

2 (2010) 7 SCC 417

Corporation of Greater Bombay[3]).

12. In the instant case, it is imperative to note, in the year 2013 itself, as the learned Civil Judge has recorded, few of the original Defendants had filed a pursis before the Trial Court and divulged the names of the persons who were in the actual occupation of the subject premises. It does not appear that the Plaintiffs took steps to implead them.

13. The documents placed on record by the newly impleaded Defendants, prima facie, indicate that they have been in the occupation of the suit property since long. Learned Civil Judge was, therefore, justified in taking a prima facie view of the matter as regards the interest of the newly impleaded Defendants in the subject matter of the suit.

14. As noted above, the Plaintiffs are seeking declaration of title and recovery of possession of the suit property. The Plaintiffs claim that the occupants of the said Gawali Chawl are all unauthorized occupants and trespassers. In such a situation, where the newly impleaded Defendants have succeeded in demonstrating that they are prima facie in possession and occupation of the portions of the suit property since long, it is not open for the Plaintiffs to seek a decree of declaration and possession by impleading persons as party Defendants to the suit who are not in the actual possession of the portions of the suit property.

3 (1992) 2 SCC 524

15. Reliance placed by Mr. Lanjekar on the decision in the case of **NAK Engineering Company Pvt. Ltd. (supra),** does not seem to be well founded as, in the said case, the Supreme Court observed in clear terms that, there was not an iota of material to indicate that the relief, as claimed in the suit against Respondent No.3, if granted, would be implemented against the Appellant. Therefore, the appellant therein was not a necessary party to the suit.

16. The situation in hand is converse. The newly impleaded Defendants claimed that, despite the factum of their possession being brought on record, the Plaintiffs chose not to implead them. In such a situation, where the newly impleaded Defendants are prima facie shown to be in the occupation and possession of the portions of the suit property, their impleadment as party Defendants cannot be resisted by submitting that the newly impleaded Defendants may resist the execution on the ground that the decree would not bind them. Such a submission runs counter to the very object of conferring power on the Court to implead parties to the suit, whose presence appears necessary for the complete and effectual adjudication of the dispute and, in whose absence, no effective decree can be passed. The Writ Petition, therefore, does not deserve to be entertained.

17. At this stage, Mr. Lanjekar, learned Counsel for the Petitioners submitted that, few of the Defendants who were already impleaded as party

defendants also joined in filing the instant application for impleadment.

18. If that is the case, the learned Civil Judge is requested to consider, whether any of the applicants in the application for impleadment were already impleaded as party Defendants to the suit and, if any of the applicants were already on record as Defendants, pass appropriate order for their deletion as newly impleaded Defendants.

19. Needless to clarify that, such of the applicants, who have already been impleaded as original Defendants, shall be bound by the orders that might have been already passed against them in the said suit.

20. Subject to the aforesaid clarification, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 17/01/2026 11:16:26