

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

WRIT PETITION NO. 498 OF 2026

OMBS Builders LLP

..Petitioner

Versus

Pravin Meghaji Gala & Ors.

...Respondents

Adv. Zia Rehman a/w Ms. Drishti Ostwal, i/by Manoj Harit &
Co., for petitioner.

Ms. Neeta Jain a/w Dhrumil Jadhav & Sejal Joshi i/by Lex
Services, for respondents No. 1 and 2.

CORAM : N. J. JAMADAR, J.

DATE : 20th JANUARY 2026

ORDER:

1. Heard the learned Counsel for the parties.
2. By this petition, the petitioner/newly impleaded Defendant No. 2, takes exception to an order dated 17th December, 2025 passed by the learned Judge, City Civil Court, in Chamber Summons No. 2991/2025 in Commercial Suit No. 1421/2024, whereby the petitioner has been permitted to be impleaded as Defendant No. 2 in the said suit and the notice of motion No. 4668 /2025 taken out by the plaintiffs-Respondent Nos. 1 and 2 for interim reliefs.

3. The Respondent Nos. 1 and 2-plaintiffs claimed that, they were tenants of a shop bearing No. 16 admeasuring 495 sq. feet on the ground floor of a structure situated on the land of which Respondent No. 3-Defendant No. 1 became the owner. The Defendant No. 1 evinced interest in re-development of the said premises. Pursuant to negotiations, an Agreement for Permanent Alternate Accommodation ("PAAA") was executed between the plaintiffs and the Defendant No. 1 on 19th October, 2012.

4. Alleging that, the Defendant No. 1 committed breach of the obligations under the said PAAA and a further verbal contract between the plaintiffs and Defendant No. 1, the plaintiffs instituted a suit seeking a declaration that, the said PAAA was valid subsisting and binding upon the Defendant No. 1 and for specific performance of the said contract and delivery of possession of a shop admeasuring 630 sq. feet, inclusive of 118 sq. feet area agreed to be conveyed to the plaintiffs under a verbal agreement, in the new project, "Yash Signatures / Yash Builders" then being developed by the Defendant No. 1.

5. Initially the suit was instituted in this Court. Upon enhancement in the pecuniary jurisdiction of the City Civil Court, the suit came to be transferred to the City Civil Court.

6. The plaintiffs took out the chamber summons seeking impleadment of the petitioner as Defendant No. 2 with the assertion that, during the pendency of the suit, the Defendant No. 1 has executed a development agreement dated 15th September, 2024 with the petitioner for development of the balance portion of the suit plot. The petitioner has thus stepped into the shoes of Defendant No. 1. It was, therefore, necessary to implead the petitioner as a party defendant to the suit.

7. The petitioner resisted the prayer in the chamber summons. It was contended *inter alia* that, there was no privity of contract between the plaintiffs and defendants. Construction of A Wing, in which the Defendant No. 1 had allegedly agreed to allot the shop to the plaintiffs, has already been completed. The plaintiffs would thus be required to work out their remedies against the Defendant No. 1 only. Therefore, the petitioner was neither a necessary nor a proper party to the suit.

8. The learned Judge, City Civil Court, was of the view that, the petitioner being a successor in interest of Defendant No. 1 was a necessary party to the suit as the PAAA did not indicate that, the shop was to be allotted to the plaintiffs in A wing only. For an effectual and complete adjudication of the disputes between the parties, the presence of the petitioner before the Court was imperative. At any rate, the petitioner was a proper, if not a necessary, party.

9. Mr. Zia Rehman, the learned Counsel for the petitioner, submitted that, the petitioner is neither a necessary nor a proper party to the suit. In fact, the petitioner has entered into the development agreement pursuant to the permission granted by this Court in Suit No.302/2021 by an order dated 13th August, 2024. Under the terms of the development agreement executed between the Defendant No. 1 and the petitioner dated 28th December, 2023, the petitioner is not liable for the obligations incurred by the Defendant No. 1. In such a situation, the impleadment of the petitioner as a party defendant to the suit would cause prejudice to the petitioner and may jeopardize the entire project.

10. There is *prima facie* material to show that, the Defendant No. 1 had executed PAAA in favour of the plaintiffs who claimed to be the tenants in respect of shop in the erstwhile structure on the suit premises and, pursuant thereto, the plaintiffs have surrendered the possession of the said shop premises. Incontrovertibly, the Defendant No. 1 had executed the development agreement in favour of the petitioner on 28th December, 2023. In a sense, the interest in the suit premises has devolved upon the petitioner.

11. The plaintiffs have instituted the suit for specific performance of the contract contained in PAAA and a further verbal agreement to allot additional area. In view of the provisions contained in Section 19(b) of the Specific Relief Act, 1963, a specific performance of a contract may be enforced against any person claiming under a party to the agreement by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract.

12. The legal position is fairly crystallized that, in a suit for specific performance, the subsequent transferee, who does not

assert a claim adverse to the vendor, ought to be impleaded as a party to the suit, for, eventually if the decree is passed, such subsequent transferee can be ordered to be joined in the execution of the instrument so as to pass a complete title to the purchaser.

13. A useful reference in this context can be made to the judgments of the Supreme Court in the cases of **Durga Prasad Vs. Deep Chand**¹ and **Dwarka Prasad Singh Vs. Harikant Prasad Singh**² .

14. In the case of **Kasturi Vs. Iyyamperumal**³, the Supreme Court drew a distinction between a subsequent purchaser, who claimed through the vendor, and a person, who claimed adversely to the claim of the vendor. The observations of the Supreme Court in paragraph 7 are instructive and hence extracted below.

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

1 AIR 1954 SC 75

2 (1973) 1 SCC 179

3 (2005) 6 SCC 733

liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with 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.”

(emphasis supplied)

15. Applying the aforesaid principles to the facts of the case at hand, the learned Judge, City Civil Court correctly exercised the discretion to permit the impleadment of the petitioner as a party defendant to the suit. Resultantly, no interference is warranted in exercise of the supervisory jurisdiction.

16. The Writ Petition thus stands dismissed.

[N. J. JAMADAR, J.]