

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

WRIT PETITION NO. 4878 OF 2025

1. Subhangi Subhash Palshetkar,
Age: 60 Occupation Housewife,
having address at 305, Pawan
apartment, Shukla compound, Shiv
Vallabh Road, Ashokvan, Dahisar (East)
Mumbai – 400 068.
2. Abhishek Subhash Palshetkar
Age – 37 years., Occupation
3. Aniket Subhash Palshetkar
Age – 35 years, Occupation

...Petitioners

Versus

1. M/s. Hariom Builders,
A registered partnership firm,
having its office at Shop No. 2,
Shiv Darshan, R.N.P. Park, Near Jesal
Park, Bhayandar (East), Thane 401 105
2. M/s. Om Shivam Developers
through its partner Mr. Kushal Raj
Parmar having address at
Raj Mandir Complex, Near Post Complex
Mira Road (East), Tal & Dist. Thane.
3. The Mira Bhayandar Municipal Corp.,
a Body Corporate, having its office at
Corporation Building, Bhayandar (West),
Tal. & Dist. Thane
4. Shri. Vijay Vasant Rao Deshmukh,
Adult, Occ: Business, Shop No. 9,
Giriraj Tower, Opp. New Petrol Pump,
Mira Road (East) 401 107,
Tal. & Dist. Thane.

5. Laxmibai Govind Patil
Age 95 years, Residing at Sector No. 6,
2nd Floor, A wing, Yashwant Arcade
Building, Flat No. 203, Opp. Teen Taki,
Koperkhairne, Navi Mumbai – 400 709.
6. Smt. Yashwanti Prabhakar Patil
Age 61 years, Indian inhabitant
Residing at Ground Floor, Wadilanchi
Savli, Bhivandi Road, Balkum No. 1,
Thane 400 608.
7. Smt. Kumud Kamlakar Patil
Adult, Indian inhabitant Residing at
Kisan Niwas, Tale Pakhadi, Moreshwar
Patil Road, Eksar Village, Borivali (West)
Mumbai 400 092.
8. Smt. Dhanwati Ramesh Patil
Age 58 years, Indian inhabitant,
Residing at Matushree House No. 143,
Sector 19, Mukam Post – Koperkhairane,
Navi Mumbai 400 709
9. Savitribai Manik Mhatre
Age 63 years, Residing at Kandar Pada,
Dahisar (West), Mumbai
10. Mr. Rajesh Morarji Chehda
11. Mr. Rajkumar Omprakash Sharma
through their Power of Attorney
Mr. Madhukar Dattaram Haiyan
Residing at:- B-403, Jay Ashtvinayak
Society, Sai Baba nagar, Mira Road East,
Dist. Thane. ...Respondents

Mr. Rohaan Cama a/w Mr. Bharat Manghani, Ms. Drushti
Gala, for the Petitioners.
Ms. Aarti H Bhandari, a/w Fehmeeda Khan, for Respondent
Nos. 10 and 11.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 23th MARCH 2026
PRONOUNCED ON : 07th APRIL 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioners take exception to an order dated 22nd July, 2024, whereby the learned Civil Judge allowed an application for impleadment of the Respondent Nos. 10 and 11 as party defendants to the suit and another order dated 22nd January, 2025, whereby an application preferred by the petitioners/plaintiffs to review the first order, came to be rejected.

3. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the trial Court.

4. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:-

4.1 The plaintiffs claimed to be the owners of property being Survey No. 252 (old) i.e. Survey No. 43 (new), Hissa No. 2, admeasuring 7360 sq. mtrs., situated at Navghar, Thane ('the suit property').

4.2 Under an agreement for sale dated 24th October, 2007, the Plaintiff Nos. 2 to 7 had agreed to sale, transfer and assign the suit property in favour of Plaintiff No. 8. Since Plaintiff No. 8 expressed his inability to conclude the transaction and agreed to give consent for the transfer of the suit property to another purchaser, the Plaintiff Nos. 2 to 7 transferred the suit property in favour of the Plaintiff No. 1. Under a deed of conveyance dated 28th November, 2008, Plaintiff No. 8 executed the said conveyance as a consenting party.

4.3 The plaintiffs claimed the Defendant Nos. 1 and 2 instituted RCS No. 32/2009 and 423/2009 falsely claiming that, the Plaintiff Nos. 2 to 7 had transferred the suit property in favour of the Defendant Nos. 1 and 2 under the respective instruments. The Plaintiff Nos. 2 to 7 had never executed any instrument in favour of the Defendant No. 1 or Defendant No. 2, and the later were laying claim over

the suit property on the basis of false and forged documents.

4.4 The plaintiff instituted the Special Civil Suit No. 615/2010 for a declaration that the conveyance dated 28th November, 2008 in favour of the Plaintiff No. 1 was legal, valid and subsisting and, conversely, the purported deeds of conveyance dated 20th October, 2007 and 14th November, 2008 and the allied instruments in favour of the Defendant Nos. 1 and 2 were illegal, bad in law and not binding upon the plaintiffs and the same stood cancelled.

4.5 In the said suit, the Respondent Nos. 10 and 11 filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 seeking their impleadment as party defendants to the said suit. It was *inter alia* averred by the Respondent Nos. 10 and 11 that, the Plaintiff Nos. 2 to 7 had executed a deed of conveyance dated 28th November, 2008 in favour of Subhash Palshetkar – deceased Plaintiff No. 1. On the basis of the said instrument, the deceased Plaintiff No. 1 had assigned FSI admeasuring 70,000 sq. feet (built up) including TDR to be consumed on the suit property at or for the lumpsum price at Rs. 864/- per sq.

feet to the Respondent Nos. 10 and 11, under an agreement dated 04th December, 2009. The deceased Plaintiff No. 1 had acknowledged the receipt of consideration of Rs.3,02,40,000/- (Rupees Three Crores Two Lakhs Forty Thousand) by way of cheques and in cash thereunder, and had also executed a Power of Attorney in favour of the Respondent Nos. 10 and 11.

4.6 The Respondent Nos. 10 and 11, further asserted that, late Subhash Palshetkar – Plaintiff No. 1 and his son Amit P1/1 avoided to execute the instrument in favour of the Respondent Nos. 10 and 11. Amit Palshetkar – P1/1 passed away in the year, 2022. Thereupon, the Respondent Nos. 10 and 11 became aware of the instant suit. Hence, the Respondent Nos. 10 and 11 sought their impleadment as party defendants to the suit.

4.7 By an order dated 22nd July, 2024, the learned Civil Judge allowed the said application recording *inter alia* that, the plaintiffs had no objection to implead the Respondent Nos. 10 and 11. The petitioners challenged the said order in Writ Petition (stamp) No. 25839/2024.

4.8 By an order dated 23rd September, 2024, the Writ Petition was disposed with liberty to the petitioner to seek review of the said order.

4.11 By the impugned order, the learned Judge, rejected the application for review observing *inter alia* that, since the Respondent Nos. 10 and 11 were claiming some rights in respect of the suit property in order to avoid multiplicity of the proceedings, it would be just and proper to implead the Respondent Nos. 10 and 11 as party defendants.

4.12 Being aggrieved, the petitioners have again invoked the writ jurisdiction.

5. I have heard Mr. Rohaan Cama, the learned Counsel for the petitioners, and Ms. Aarti Bhandari, the learned Counsel for the Respondent Nos. 10 and 11, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

6. Mr. Cama, the learned Counsel for the petitioners, submitted that, the learned Civil Judge has completely misconstrued the scope of the provisions contained in Order I Rule 10 of the Code, and, thus, misdirected himself

in ordering the impleadment of the Respondent Nos. 10 and 11 who can, at best, be said to have a cause of action against deceased Plaintiff No. 1, which is contingent upon the outcome of the instant suit. However, the Respondent Nos. 10 and 11 by no stretch of imagination can be either necessary or proper parties. Since the instant suit revolves around the instruments purportedly executed by the Plaintiff Nos. 2 to 7 in favour of the Plaintiff No. 1, on the one part, and Defendant Nos. 1 and 2, on the other part, the presence of the Respondent Nos. 10 and 11 is not at all necessary for passing a decree or for an effectual and complete adjudication of the suit.

7. Mr. Cama further submitted that, the learned Civil Judge was swayed by the factor of avoiding the multiplicity of the proceedings. However, the crucial fact that the claim of Respondent Nos. 10 and 11 was so divergent as to warrant adjudication, in the instant suit, was completely lost sight of. A strong reliance was placed by Mr. Cama on a three-Judge Bench judgment of the Supreme Court in the case of *Kasturi Vs. Iyyamperumal & ors.*¹ to buttress the submission that, the provisions of Order I Rule 10,

1 (2005) 6 SCC 733

cannot be resorted to implead the parties for resolution of controversies which are not involved in the suit.

8. In opposition to this, Ms. Bhandari, the learned Counsel for the Respondent Nos. 10 and 11, would submit that, since deceased Plaintiff No. 1 had executed an agreement in favour of the Respondent Nos. 10 and 11 to convey 7,000 sq. feet built up area over the suit property and accepted a valuable consideration of Rs.3,02,40,000/- (Rupees Three Crores Two Lakhs Forty Thousand), the Respondent Nos. 10 and 11 have a definite interest in the subject matter of the suit. Any decree passed in the instant suit would bear upon the rights of the Respondent Nos. 10 and 11. Therefore, the learned Civil Judge was fully justified in directing the impleadment of the Respondent Nos. 10 and 11 as party defendants to the suit. Attention of the Court was invited to the statements of accounts and bank passbooks which purportedly evidence the transfer of the amount by the Respondent Nos. 10 and 11 in favour of the deceased Plaintiff No. 1.

9. I have carefully perused the averments in the plaint and the application for impleadment of the Respondent

Nos. 10 and 11. The tenor of the plaint is that, the Plaintiff Nos. 2 to 7 were the original owners of the suit property. The Plaintiff Nos. 2 to 7 entered into an agreement to sell the suit property in favour of the Plaintiff No. 8. The said transaction did not materialize. Thereupon, the Plaintiff Nos. 2 to 7 purportedly executed a deed of conveyance in favour of the Plaintiff No. 1 on 28th November, 2008. The Defendant Nos. 1 and 2 have propounded the purported deed of conveyances executed by the Plaintiff Nos. 2 to 7 on 14th November, 2008 and 18th September, 2008, respectively. The plaintiffs claimed those and the allied instruments in favour of the Defendant Nos. 1 and 2 are null, void and not binding upon the plaintiffs.

10. Apparently, the deeds of conveyance in favour of the Defendant Nos. 1 and 2 were executed and registered prior in point of time than the deed of conveyance dated 28th November, 2008, executed and registered in favour of the Plaintiff No. 1 by Plaintiff Nos. 2 to 8. Thus, the essential contest in the suit is which of the three instruments purportedly executed by the Plaintiff Nos. 2 to 7 is legal and valid.

11. Keeping in view the aforesaid nature of the contest in Suit No. 615/2010, the justifiability of the impugned orders to implead the Respondent Nos. 10 and 11 deserves to be examined.

12. The Respondent Nos. 10 and 11 claimed that, Subhash Palshetkar - deceased Plaintiff No. 1 had entered into an agreement on 04th December, 2009, thereby agreeing to assign FSI admeasuring 70,000 sq. feet (built up) including TDR to be consumed on the suit property for a consideration of Rs. 6,04,80,000/- (Rupees Six Crores Four Lakhs Eighty Thousand). Receipt of an amount of Rs. 3,02,40,000/- (Rupees Three Crores Two Lakhs Forty Thousand) towards part consideration was acknowledged thereunder. The Respondent Nos. 10 and 11 further claimed that, they could not pursue the matter as Subhash Palshetkar was arrested by the Police in the year, 2009 and passed away in the year, 2012, while he was in judicial custody, and Amit Palshetkar P1/1, the son of deceased Plaintiff No. 1 kept assuring the Respondent Nos. 10 and 11 that necessary instruments would be executed in favour of the Respondent Nos. 10 and 11.

13. It becomes explicitly clear that, the Respondent Nos. 10 and 11 seek to enforce an obligation, created under the agreement dated 04th December, 2009, attached to the suit property under Section 40 of the Transfer of Property Act, 1882. Incontrovertibly, the remedy of Respondent Nos. 10 and 11 is to seek the specific performance of the contract contained in the said agreement.

14. Without delving into the question of the justifiability of such claim for specific performance of the contract, contained in the said agreement, for the purpose of the determination of the controversy at hand, it is necessary to note that, the said contract can be specifically enforced only when there is no cloud on the title of the plaintiffs. Therefore, the claim of the Respondent Nos. 10 and 11 hinges upon the declaration of title of the Plaintiff No. 1 over the suit property, in the instant suit. With the aforesaid clarity on facts, the sustainability of the impugned order on the touchstone of the governing legal principles is required to be tested.

15. It is trite, the matter of addition or deletion of a party to the suit is not one of the initial jurisdiction but that of

judicial discretion. Like in other matters, where such discretion is required to be exercised, the discretion to add or delete a party to the suit is required to be exercised keeping in view the object of the enabling provision. If the Court finds that a party is a necessary party, then the impleadment of such a party becomes imperative, lest the court cannot pass an effective decree. In a case where the impleadment of a party is sought as a proper party, then the Court has to pose unto itself a question, as to whether the presence of such person is warranted for an effectual and complete adjudication of the dispute, though such person is not a necessary party.

16. The distinction between a necessary and a proper party is well marked. In the case of *Kasturi vs. Iyyamperumal (supra)*, on which reliance was placed by Mr. Cama, a three-Judge Bench of the Supreme Court enunciated that necessary parties are those persons in whose absence no decree can be passed by the Court and there must be a right to some relief against such party in respect of the controversies involved in the proceedings, and proper parties are those whose presence before the

Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief was claimed against such person.

17. In the case of *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. & ors.*², the Supreme Court expounded the distinction between necessary party and proper party, as under:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence not 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 matter in dispute in the suit, though he need not 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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. In the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & ors.*³, the Supreme Court enunciated that, the expression, “whose presence before the Court may be necessary in order to

2 (2010) 7 SCC 417

3 (1992) 2 SCC 524

enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit” indicates that, the Court is empowered to join a person whose presence is necessary for the specified purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

19. The Supreme Court further clarified that, it cannot be said that, the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The observations in Paragraph No. 14 read as under:

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a

necessary party is not merely that he has relevant evidence to given on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer. i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.”.....

(emphasis supplied)

20. Applying these principles, to the facts of the case at hand, it is evident that, the Respondent Nos. 10 and 11 intend to prosecute their own cause of action against the Plaintiff No. 1. The net effect would be that there would be

two distinct contests. First, between the plaintiffs on the first part, and Defendant Nos. 1 and 2, on the other part, in regard to the legality and validity of the rival instruments set up by the plaintiff No. 1, and Defendant Nos. 1 and 2. Second, between the Plaintiff No. 1 and the Respondent Nos. 10 and 11 in regard to the specific performance of the contract between Plaintiff No. 1 and Respondent Nos. 10 and 11, under the agreement dated 04th December, 2009. The question that thus wrenches to the fore is whether the presence of the Respondent Nos. 10 and 11 is necessary to enable the Court to adjudicate and settle, “all the questions involved in the suit”. The aspects of existence of an agreement for sale between the Plaintiff No. 1 and Respondent Nos. 10 and 11, the legal enforceability of the said agreement, and the entitlement of Respondent Nos. 10 and 11 to specific performance thereof are all matters which do not appear to be the questions involved in the suit.

21. Mr. Cama is justified in canvassing a submission that, the claim of the Respondent Nos. 10 and 11 hinges upon the declaration of title sought by the Plaintiff No. 1. The reliance placed by Mr. Cama on the judgment of the

Supreme Court in the case of *Kasturi Vs. Iyyamperumal (supra)*, explaining the import of the expression, “all the questions involved in the suit” appears to be apposite. The Supreme Court observed are as under :-

“16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party”.

22. In the case of *Mumbai International Airport (supra)* in regard to the impleadment of a proper party, the Supreme Court delineated the approach to be adopted by the Court in the following terms : -

“24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application

seeking impleadment as a proper party and the court finds him to be a property party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.

25. *In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”*

23. It is true, the aforesaid enunciation was made in the context of a suit for specific performance of the contract for sale of the property. However, the principle may govern the facts-situation formed by the other jural relationship as well. If the Court finds that, the addition of a party will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to

be a proper party, if the Court does not want to widen the scope of the suit.

24. The conspectus of the aforesaid consideration is that, the learned Civil Judge did not consider the implications of the impleadment of Respondent Nos. 10 and 11 who have, at best, a claim for specific performance of the contract executed by and between the Plaintiff No. 1 and Respondent Nos. 10 and 11, in a suit where the essential contest is regarding the legality and validity of the instruments executed by the plaintiff Nos. 2 to 7 in favour of the Plaintiff No. 1, and Defendant Nos. 1 and 2. The impleadment of the Respondent Nos. 10 and 11 would completely alter the nature of the contest and introduce a new cause of action qua Plaintiff No. 1 only. Resultantly, it may embarrass the trial of the instant suit. Hence, the impugned orders cannot be sustained. Therefore, the Writ Petition deserves to be allowed.

25. Thus, the following order:-

:: O R D E R ::

i] The Writ Petition stands allowed.

ii] The Impugned order dated 22nd July, 2024, as well as order dated 22nd January, 2025 stand quashed and set aside.

iii] The application for impleadment of the Respondent Nos. 10 and 11 as party defendants to the suit stands rejected.

iv] It is further clarified that, this order would not preclude the Respondent Nos. 10 and 11 from invoking the remedies that are available in law by instituting separate proceedings before the appropriate forum.

v] Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]