

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3456 OF 2026

Ashirwad Vasant Phalnikar and ors. ...Petitioners

Versus

Sanjeev Hanumant Phalnikar and ors. ...Respondents

Mr. V. H. Narvekar, for the Petitioner.

Dr. A. S. Tilak, for Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 6th APRIL, 2026

Order:-

1. Heard the learned Counsel for the Petitioner.
2. The Petitioners – Plaintiff Nos.1(b), 1(c), 1(d) and 2(c) assail the legality, propriety and correctness of an order dated 20th January, 2026 passed by the learned Judge, City Civil Court in Review Petition No.206 of 2021 in Chamber Summons No.2249 of 2019, whereby the said review petition was allowed, the order dated 15th November, 2021 passed in the said Chamber Summons No.2249 of 2019 was recalled and the Petitioners - Plaintiff Nos.1(b), 1(c), 1(d) and 2(c) were directed to be transposed as the defendant in exercise of the powers under Order I Rule 10(2) of the Code of Civil Procedure, 1908, and the Respondent No.1 - Plaintiff No.2(b) was permitted to continue the suit as sole Plaintiff.

3. Shorn of superfluities, the background facts can be stated as under:

3.1 The predecessor-in-title of plaintiffs, namely Vasant Phalnikar and Hanumant Phalnikar, instituted a suit being Suit No.2920 of 1989 seeking partition and separate possession of the suit properties situated at Plot No.37, Dr. M. B. Raut Road, Shivaji Park, Dadar, Mumbai, and the land bearing Survey No.4 Hissa No.2 admeasuring 32 Gunthas situated at Munjeri, Pune. By a judgment and decree dated 7th August, 2002, the said suit was partly decreed. Being aggrieved, the Plaintiffs preferred Appeal No.481 of 2002 and the legal representatives of late Madhav Phalnikar preferred Cross Appeal (L) No.829 of 2002 before the Division Bench.

3.2 By judgment and decree dated 2nd July, 2008, the Division Bench was persuaded to modify the decree. It was, *inter alia*, declared that Plaintiff No.1, Plaintiff No.2 (Plaintiffs No.2(a) to 2(c) together) as well as Defendant No.1 (Defendant No.1(a) to 1(f) together) and Defendant No.2 each, have $\frac{1}{4}$ th share in each of the joint family properties.

3.3 The said preliminary decree attained finality.

3.4 Final decree proceedings were initiated. Eventually, the

suit came to be transferred to the City Civil Court in the wake of the enhancement in the pecuniary jurisdiction of the City Civil Court. In the said suit, it appears disputes arose among the Plaintiffs in regard to the partition of the suit properties, especially, the redevelopment of the suit property situated at Shivaji Park, Dadar. It seems, the Respondent No.1 - Plaintiff No.2(b) did not accede to the request of the rest of the plaintiffs and the defendants as well, to give consent for the redevelopment of the suit property. Various proceedings were filed before the City Civil Court.

3.5 In view of the disputes, *inter se*, the Respondent - Plaintiff No.2(b) took out the Chamber Summons seeking transposition of Plaintiff Nos.1(b), 1(c), 1(d) and 2(c) to the Defendants. The said Chamber Summons was resisted by the petitioners. By an order dated 16th November, 2021, the learned City Civil Court dismissed the Chamber Summons observing, *inter alia*, that there was no provision in the Code of Civil Procedure, 1908 ("the Code") for transposing some of the Plaintiffs as the Defendants as all the Plaintiffs were having common interest.

3.6 Respondent No.1 sought review of the said order. By the impugned order the learned Judge, City Civil Court found that there was an error apparent on the face of the record as in the

earlier order the court had incorrectly recorded that there was no provision in the Code which permitted the transposition of the Plaintiffs to the Defendants. The learned Judge noted that the Plaintiffs were adopting mutually destructive or adversarial positions and it was not possible to proceed with the suit in an orderly manner in view of the conflicting stands of the Plaintiffs.

4. Being aggrieved, Plaintiff Nos.1(b), 1(c), 1(d) and 2(c) have invoked the writ jurisdiction.

5. Mr. V. H. Narvekar, the learned Counsel for the Petitioners, submitted that no case for review was made out. Neither there was any error apparent on the face of the record, nor any other sufficient cause to review the order passed by the Court on 15th November, 2021. In fact, the learned judge has passed the impugned order as if he was sitting in appeal over the order passed by his predecessor.

6. On the merits of the matter, Mr. Narvekar would urge that, since the Division Bench of this Court has declared that, the Plaintiff Nos. 1 and 2 [Plaintiff Nos. 2(a) to 2(c)] have $\frac{1}{4}$ th share in the joint family properties, it was not open to now relegate the plaintiffs as the defendants. The issue with regard to the re-development of the property at Mumbai can be determined by the City Civil Court and for that purpose, the character of the

plaintiffs as the decree holders is not required to be altered, after passing of the preliminary decree.

7. In opposition to this, Dr. A. S. Tilak, the learned Counsel for the Respondent No. 1 would submit that, the material on record would indicate that, not only there are differences between the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c), on the one part, and Plaintiff No. 2 (b) – Respondent No. 1 herein, on the other part, but even the above numbered plaintiffs except Respondent No. 1 have joined hands with the defendants. Attention of the Court was invited to the correspondence exchanged between the parties, the proceedings filed before the City Civil Court seeking diverse relief and the orders passed by the Court which indicate that, contradictory stands are being taken by the plaintiffs and two sets of Advocates are appearing for the plaintiffs. In these circumstances, the learned Judge, City Civil Court was fully justified in directing the transposition of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) as the defendants.

8. At the outset, it is necessary to note that, in the impugned order the learned Judge, City Civil Court has recorded reasons which necessitated the review of the order passed by the City Civil Court on 16th November, 2021. It was *inter alia* noted that,

in the said order the then learned Judge, City Civil Court had recorded that there was no provision in the Code of Civil Procedure for transposing some of the plaintiffs as the defendants.

9. The view recorded in the impugned order by the learned Judge, City Civil Court appears impeccable. The provisions contained in Order I Rule 10(2) of the Code empower the Civil Court to order the transposition of the parties. The only condition is that such power ought to be exercised by Court for doing complete justice between the parties. [*R. S. Maddanappa (deceased) through LR's Vs. Chandramma & anr.*¹]. Thus, the order dated 15th November, 2021, suffered from an error apparent on the face of the record in as much as the learned Judge had observed that, the Court had no power to order the transposition of the parties despite the provisions contained in the Code.

10. Undoubtedly, the Plaintiff No. 1 and Plaintiff No. 2; the predecessor in title of the plaintiffs now prosecuting the suit, were declared to be entitled to ¼th share in the suit properties. By no stretch of imagination it could be urged that, the said declaration of the rights of the plaintiffs and the Defendant Nos.

1 AIR 1965 SC 1812

1 and 2 under the decree passed by the Division Bench would be affected by the transposition of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) as the defendants. Nor the trial Court has professed to either undermine or question the decretal rights of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c).

11. The vital factor which weighed with the trial Court was the irreconcilable differences that have crept in, among the plaintiffs inter se. The two sets of the plaintiffs were seeking divergent reliefs. In substance, the plaintiffs have turned astray. It appeared that, the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) have now aligned with some of the defendants.

12. The aforesaid assessment of the learned Judge, City Civil Court is borne out by the material on record. This becomes evident from the communication addressed on behalf of one of the defendants to the authorities and the parties. Noticing the irreconcilable differences between the plaintiffs, Divekar & Company, the Advocate for the plaintiffs have expressed their disinclination to represent the plaintiffs as that would amount to conflict of interest. What seals the issue is the Notice of Motion No. 3749/2022 taken out by the Plaintiff No. 2(b) seeking permission to create third party interest in respect of the property situated at Pune and a direction to the parties to give

their consent for the proposal given by a prospective developer. In the further affidavit in support of the said Notice of Motion, the Plaintiff No. 2(b) asserts that, not only the Plaintiff No. 1(d) but Defendant Nos. 1(e), 1(f), 1(d), 1(g), 2(c), and 2bi have sent him the affidavits in support of the Notice of Motion. It is affirmed therein that, the abovenumbered parties have no objection to allow the said notice of motion. Only Plaintiff No. 2(b) – Respondent No. 1 herein, had not given the consent. It further appears that, the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) took out chamber summons and draft notice of motion, the copies of which were served on Plaintiff No. 2(b) and the Plaintiff No. 2(b) was directed to file a reply thereto, vide order dated 03rd October, 2022.

13. The situation which thus obtained is that, not only irreconcilable differences have arisen among the plaintiffs inter se but the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) have joined hands with some of the defendants. At the stage of final decree proceedings the interests of Plaintiff No. 1(b), 1(c), 1(d) and 2(c), on the one part, and Plaintiff No. 2(b), on the other part, have become conflicting. The manner in which the preliminary decree is to be given effect to is now at heart of the controversy among the plaintiffs.

14. In the aforesaid view of the matter, the learned Judge, City Civil Court seems to have committed no error in directing the transposition of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) as the defendants. As the plaintiffs are taking contradictory and mutually inconsistent stands and are being represented by a different set of advocates, the unity of interest has become a casualty. In such a situation, continuation of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) as the plaintiffs in the prosecution of final decree proceeding would lead to incongruous results and embarrass the proceedings.

15. A useful reference in this context can be made to a judgment of this Court in the case of *Bayajabai Ganpat Patil Vs. Keval Rambhau Patil*², wherein it was enunciated that, where the plaintiff disputed the right of a party to have an interest in the property which the plaintiff was claiming, that party should be properly joined as a defendant and not as a co-plaintiff, because if he was joined as a defendant an issue could be raised between the plaintiff and a party newly joined. This seems to be really the principle underlying a party being joined to the suit. It is only if he joined as a defendant that an issue can be legitimately raised between him and the plaintiff where the

2 AIR 1953 Bom. 202

plaintiff disputes the title of the party applying to be made a party to the suit.

16. Following the aforesaid pronouncement in the case of ***Ram Gopal Sah Vs. Dhirendra nath & anr.***³, the Patna High Court held that, it is a sound exercise of discretion not to add a person between whom and the existing plaintiff, there is direct conflict as a co-plaintiff because if he is joined as a defendant, issue can be raised between the plaintiff and party newly joined.

17. In the case of ***Thakur Choudhary & ors. Vs. Brahmdeo Chaudhry & ors.***⁴, the Patna High Court held that, it is well settled that, a person can be added as a co-plaintiff with another only when he can adopt the plaintiff's case. Persons having conflicting cases cannot be made co-plaintiffs and if the plaintiff and the defendant have conflicting cases, the question of making the defendant a plaintiff and the plaintiff a defendant does not arise until such a contingency occurs when, for instance, the plaintiff is withdrawing from the suit.

18. In the case at hand, the controversy has arisen among the plaintiffs at the stage of final decree proceedings in regard to the manner of execution of the decree declaring rights of the

3 AIR 1981 PATNA 298

4 AIR 1979 PATNA 58

parties. That however does not make a significant difference. Thus, without detracting from the rights of the plaintiffs under the decree, for the purpose of the implementation and execution of the decree for partition in view of the irreconcilable differences among the plaintiffs, the transposition of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) appears to be essential for doing complete justice between the parties.

19. Thus, clarifying the position that the transposition of the Plaintiff Nos. 1(b), 1(c), 1(d) and 2(c) as the defendants would not impinge upon their rights under the decree, the Writ Petition stands dismissed.

[N. J. JAMADAR, J.]