18 August 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 662 OF 2023

Shri. Parag Prakash Mutha)
Age : 40 yrs, Occ : Agri & Business)
R/o. Kalpataru Plaza, 3rd Floor,)
Bhavani Peth, Pune) …PETITIONER/
ORIG. PLAINTIFF

V/S

1. Kashinath Barku Bhalsingh
(Since deceased through legal
Heirs) and Ors.

1.1 Shri. Anil Kashinath Bhalsingh
Age : 38 yrs, Occ : Agriculture
1.2 Shri. Sunil Kashinath Bhalsingh
Age : 33 yrs, Occ : Agriculture

1.2 Smt. Sita Kashinath Bhalsingh
Age : 60 yrs, Occ : Agri. & Household
All R/o. At & Post Kolwadi, Taluka-Haveli
District : Pune

1.4 Sou. Anita Navnath Pawar

Age : 34 yrs, Occ : Agri. & Household
R/o. At & Post-Pawarwadi, Taluka-Haveli
District : Pune.

1.5 Sou. Smita Jitendra Kothwal
Age : 28 yrs, Occ : Agri. & Household
R/o. At & Post Wagholi, Taluka-Haveli,
District-Pune.

2. Shri. Vikas Sudam Kanchan
Age : 39 yrs, Occ : Agri. & Business
R/o. At & Post Kolwadi, Taluka-Haveli,
District-Pune

3. Shri. Mukesh Suresh Bhat
Age : 36 yrs, Occ : Agri. & Business
R/o. Survey No.21/1B, Gurukrupa Hsg. Soc.
Keshavnagar, Mundwa, Pune-411 036.

4. Shri. Ajit Ananda Gaikwad,
Age : 32 yrs, Occ : Agri. & Business
R/o. At & Post : Kolwadi, Taluka-Haveli,
District-Pune.
5. Prakash Babulal Mutha,
Age : 66 yrs, Occ : Business

6. Mrs. Shailaja Prakash Mutha,
Age : 57 yrs, Nos.5 and 6 R/o. Flat
No.105A, 105B, 205A, 205B, City Woods,
Maple, Salisbury Park, Maharshinagar, Gultekdi,
Pune-411 037.) …RESPONDENTS

Mr. Shailendra S. Kanetkar, for the Petitioner.

Mr. S.C. Wakankar, Advocate for the Respondents.

CORAM: SANDEEP V. MARNE, J.

DATED: AUGUST 18, 2023

JUDGMENT:

1. Petition arises out of a challenge set up by Petitioner-son to the order dated 10 January 2022 passed by the 7th Additional Judge, Small Causes Court and Joint Civil Judge Senior Division Pune allowing application filed by Respondent Nos. 5 and 6 (parents) at Exhibit-62 by which Court has directed the son to add his parents as parties to son's suit.

2. Brief facts of the case, shorn of unnecessary details are as under:

The suit property bearing Gat No.570/2 admeasuring 48 Ares situated at Village- Kolwadi, Taluka-Haveli, District-Pune was originally owned by one Shri. Laxman Bhairu Bhole and others. The same was purchased by Shri. Kashinath Barku Bhalsingh by way of registered sale-deed dated 23 September 1986. Shortly after the purchase transaction, Shri. Kashinath Barku Bhalsingh sold the suit land in the name of Petitioner-Plaintiff by way of registered sale-deed dated 26 November 1992. Petitioner-Plaintiff claims that he was put in vacant and peaceful possession of the suit land.

3. By way of registered sale-deed dated 3 October 2018, the legal representatives of Shri. Kashinath Barku Bhalsingh (Respondent Nos.1.1 to 1.5) sold the suit land in the name of Respondent/Defendant Nos. 2 to 4. Petitioner-plaintiff therefore filed Regular Civil Suit No. 348/2019 in the Court of Civil Judge Junior Division, Pune seeking a declaration that he is the owner of the suit land by virtue of registered sale-deed dated 26 November 1992. He sought a further declaration that the sale-deed dated 13 October 2018 executed by Respondent Nos.1.1 to 1.5 in favour of Respondent/Defendant Nos.2 to 4 was not binding on them. Petitioner/Plaintiff later decided to enter into compromise deed with Respondent/Defendant Nos.2 to 4 and accordingly a compromise agreement was executed on 1 April 2021, under which Petitioner-plaintiff decided to give up his rights in respect of the suit land for consideration of Rs.80,00,000/-.

4. Respondent Nos.5 and 6 are Petitioner's father and mother respectively. After noticing that Petitioner was compromising the suit with Respondent Nos.2 to 4, they filed application under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 (Code) on 8 June 2021 seeking their impleadment as Plaintiff Nos. 2 and 3 to the suit. In their application, Respondent Nos.5 and 6 averred that the suit property was actually purchased by the father (Respondent no.5) in the year 1992 in the name of Petitioner-plaintiff, who was merely 11 years old at that time. That the suit was also instituted by the family in the name of Petitioner-plaintiff, as the sale-deed stood in his name. That a compromise was entered between the son and parents on 25 August 2019 under which, Petitioner-plaintiff agreed to gift various properties (including the suit property) in the name of his mother and for that purpose executed a Power of Attorney in father's name. That some of the gift deeds were executed and before gift-deed of the suit property could be executed, Petitioner-plaintiff surreptitiously entered into compromise deed with Respondents/Defendant Nos.2 to 4.

5. Petitioner-plaintiff resisted the impleadment application of Respondent Nos. 5 and 6 by filing reply. The Trial Court proceeded to allow the application of Respondent Nos. 5 and 6 by order dated 10 January 2022 directing Petitioner-plaintiff to

add Respondent Nos. 5 and 6 as party to the suit and to carry out necessary amendment to that effect. The order dated 10 January 2022 is the subject matter of challenge in the present petition.

6. Appearing for Petitioner, Mr. Kanetkar the learned counsel would submit that Respondent Nos. 5 and 6 are not necessary parties to the suit. That Suit filed by Petitioner-Plaintiff does not and cannot involve the issue of ownership by Respondent Nos.5 and 6 in the suit property. That entry of Respondent Nos. 5 and 6 in the suit would completely alter the nature of litigation. That if Respondent Nos.5 and 6 claim any right in the suit property, they ought to have exercised their right independently by filing a suit against the Petitioner-plaintiff at an appropriate time. That they acquiesced in the position that Petitioner-plaintiff is the real owner of the suit property by not adopting any proceedings immediately after the year 1992 or immediately after he attained majority. That therefore they cannot now be permitted to derail plaintiff's suit which was filed to challenge subsequent sale-deeds executed in favour of Respondent Nos. 2 to 4. That the suit is being compromised by the contesting parties to it (Plaintiff and Respondent Nos.2 to 4) and the impleadment application is filed with the ulterior objective of frustrating such a compromise.

7. Mr. Kanetkar would further submit that mere avoidance of multiplicity of litigation cannot be a ground to permit entry of

strangers to a suit especially when their entry changes the very nature of the suit. In support of his contention, Mr. Kanetkar relies upon the judgments of the Apex Court in the case of (i)**Gurmit Singh Bhatia Versus. Kiran Kant Robinson and Others,** (2020) 13 SCC 773 and (ii)**Ramesh Hirachand Kundanmal Versus. Municipal Corporation of Greater Bombay and others**, (1992) 2 SCC 524.

8. Mr. Wakankar, the learned counsel would appear on behalf of Respondent Nos. 5 and 6 and would invite my attention to the pleadings in the plaint of Petitioner-plaintiff to demonstrate an express admission therein that the entire consideration for purchase of the suit property in the year 1992 was paid by the father. He would submit that the age of Petitioner-plaintiff in the year 1992 was merely 11 years and he has specifically admitted that the sale-deed dated 26 November 1992 was executed in the name of Petitioner-plaintiff after payment of consideration of Rs.17,300/- by his father (Respondent No.5). That even negotiations were conducted by the father and not by the Petitioner. He would submit that it was the father who wanted to institute the suit to protect the family properties. That in the year 2019, the relationship between the parents and the son were cordial and therefore the father instituted the suit in the name of Petitioner since his name is reflected in the sale-deed. That the parents were required to intervene in the suit only after noticing attempts on the part of the

son to compromise the suit behind their back. That the suit property is owned by the family and not by Petitioner alone and that he has no right to compromise the suit by keeping the parents in dark. He would then invite my attention to the contents of the compromise-deed dated 1 April 2021 under which the Petitioner-plaintiff has acknowledged acquisition of ownership rights by Respondent Nos.2 to 4 under the sale-deed executed in the year 2018. That he has admitted in the compromise deed that there was no cause of action for the Petitioner to file the suit. That the Petitioner-plaintiff has no right to relinquish any right in the suit property in the name of Respondent Nos.2 to 4 as the entire consideration for purchase of the property was paid by the father.

9. Mr. Wakankar would submit that a family arrangement as agreed between the Petitioner-plaintiff to gift various properties including the suit property in the name of his mother. In pursuance of the family arrangement, Petitioner-plaintiff has executed a Power of Attorney in favour of the father to enable him to execute the gift-deeds in the name of mother. That the conduct of Petitioner-plaintiff in entering into compromise deed was in the teeth of such a family arrangement. That the Petitioner-plaintiff has instituted a separate suit against the parents bearing Special Civil Suit No. 101/2020 seeking cancellation of Power of Attorney.

10. Mr. Wakankar would further submit that in the light of the above position, Respondent Nos.5 and 6 are necessary parties to the suit in their capacity as the owners of the suit property. That the main objective for Respondent Nos.5 and 6 to intervene in the suit is to prevent Petitioner-plaintiff from compromising the suit. That the suit cannot be compromised without the consent of Respondent Nos. 5 and 6. That they being owners of the suit property, the suit cannot be decided in absence of Respondent Nos.5 and 6. That Respondent Nos.5 and 6 cannot be made to file a separate suit to prevent Petitioner-plaintiff from acknowledging any rights in favour of Respondent/Defendant Nos. 2 to 4. That such a course of action would lead to multiplicity of litigation. That the Trial Court has therefore rightly allowed impleadment of the parents as parties to the suit. In support of his contention, Mr. Wakankar has relied upon the judgments of this Court in (i)**Milind Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai and Another**, 2006(1)Mh.L.J. 385 and (ii)**Kashibai Waman Patil (D) thr. LRs. Vs. Shri. Taukir Ahmed Mohammed Hanif Khan & Ors**, 2015(6) ALL MR 340. He would pray for dismissal of the petition.

11. Rival contentions of the parties now fall for my consideration.

12. Before adverting to the merits of the issue whether Respondent Nos. 5 and 6 are necessary parties to Suit, two glaring

errors in the impugned order attract my attention at the very outset. Though Respondent Nos.5 and 6 desired their impleadment as Plaintiff Nos. 2 and 3 and though their application is allowed, the operative portion directs them to be added as '*party to the suit*'. It is thus not clear whether Respondent Nos.5 and 6 are directed to be added as Plaintiffs or Defendants. For the sake of convenience, the prayers made therein by Respondent Nos.5 and 6 in their application are reproduced thus:

> "a. The application may kindly be allowed.
> b. The Applicants may kindly be added as Plaintiff No.2 and Plaintiff No.3 to the present suit.
> c. Any other order in the interest of justice may kindly be passed."

13. The operative portion of the order dated 10 January 2022 passed by the Trial Court reads thus :-

> "1. Application is allowed.
> 2. Plaintiff is directed to add **third party as party** to this suit and carry out necessary amendment to that effect and also supply the copy of the plaint to him."
> *(emphasis and underlining supplied)*

14. Thus, though Respondent Nos.5 and 6 prayed for their impleadment as Plaintiff No.2 and Plaintiff No.3 to the suit, the Trial Court has directed their impleadment not as Plaintiffs but as '*party*' to the suit. The Trial Court ought to have specified in its order the capacity in which Respondent Nos.5 and 6 are directed to be added as parties to the suit. However, unfortunately the same is

not done and the capacity in which they are to be added is left to the imagination. Such a course of action ought to have been avoided by the Trial Court.

15. There is yet another glaring error committed by the Trial Court while deciding the impleadment application. The application was filed both by Respondent Nos.5 and 6 for their impleadment. However, the reasonings recorded by the Trial Court would indicate that the Trial Court has recorded the reasons why only Respondent No.5 (father) is a necessary party. There is no discussion as to why mother is required to be impleaded as a party to the suit. The findings recorded by the Trial Court for allowing the impleadment application in para-5 of the order are as under :

> "5]. I have gone through them. The dictum in the aforesaid judgments is that for proper adjudication and to prevent multiplicity of the suit, court can add or delete parties. So, for two purposes, party can be added or deleted. One is for proper determination and another for preventing multiplicity of the suits. It is no doubt clear from the sale-deed on record that the subject matter of suit was purchased by the father in 1992 when son was minor. He had no source of money. The father has paid consideration for sale-deed. As per father, the suit property was purchased for the benefit of family. There is exemption to the Benami transaction if Karta of the family purchases property in the name of member of family for the benefit of family. This case is nearer to that exemption and in that sense for proper adjudication as well as for preventing the multiplicity of suit, father is necessary party to this proceeding."

16. The above findings would show that the Trial Court has ventured to decide why father is a necessary party to the suit. Even the operative portion of the order directs addition of 'third *party* as a *party* to the suit' and not 'third *parties* as *parties* to the suit'. It is therefore once again unclear whether only father is to be added as a party to the suit or even mother is directed to be added as a party. The Trial Court was dealing with a common application filed by both father and mother and therefore ought to have discussed as to why both of them are necessary parties and ought to have issued a specific direction whether both of them should be impleaded as parties or not. This is yet another error in the order passed by the Trial Court.

17. Be that as it may, now I proceed to determine the issue of correctness of the order dated 10 January 2022 on a presumption that both Respondent Nos.5 and 6 have been directed to be added as parties since the application has been allowed. Such presumption is necessitated as the operative portion of the order directs that '*the Application is allowed*.' The question whether they are to be added as Plaintiffs or Defendants still begs an answer. In absence of any clarity in this area, leaving aside the issue whether they can be added as Plaintiffs or Defendants, I first proceed to determine whether they are necessary parties for being added to the suit under the provisions of Order 1 Rule 10 of the Code.

18. Court are conferred with power to add or strike out parties under provisions of Order 1 Rule 10 of the Code, which reads thus :

> "**10. Suit in name of wrong plaintiff.**
>
> **(1)** Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
>
> **(2) Court may strike out or add parties-** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.
>
> **(3)** No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
>
> (4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

19. Court's power to implead parties under the provisions of Order 1 Rule 10 has been a subject matter of numerous decisions of the Apex Court. It has been repeatedly emphasized that a Plaintiff being *dominus litis* of his/her suit, cannot be forced to sue or seek relief against undesired person. Only those parties, in whose absence, suit cannot be effectively decided can usually be added as parties to a suit. The Apex Court, in its judgment in **Gurmit Singh Bhatia** (supra) has expounded broad legal principles governing the issue of impleadment of parties to a suit. The Court has held in para-5.2 as under :-

"5.2 An identical question came to be considered before this Court in the case of Kasturi (supra) and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The 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. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a

necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character."

20. Again in **Ramesh Hirachand Kundanmal** (supra), the Apex Court held 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 objectives. 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 give 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 questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is 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 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. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd., (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A v. Bank of England,(1950) 2 All E.R.611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:-
>
> The test is `May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'

21. Thus as per the law expounded in various decisions of the Apex Court, a Court cannot invoke provisions of Order 1 Rule 10 of the Code for adding party unless there is a right to same relief against such party sought to be added relating to the controversy involved in the proceedings and that no effective decree can be passed in absence of such a party. Though parties can be added with a view to avoid multiplicity of litigation, a third party cannot be added so as to convert suit of one character into a suit of different character.

22. The premise on which Respondent Nos. 5 and 6 desired impleadment as Plaintiffs to the suit is their assertion that they are the real owners of the suit property. In this regard following pleadings made by Respondent Nos.4 and 5 in their application for impleadment would be relevant;

> "The Plaintiff is the son of Applicants as mentioned above. It is an admitted fact by Plaintiff that the suit property has been purchased by the Applicant No.1 for Rs.17,300 and the said entire consideration has been paid by the Applicant No.1. The Plaintiff has also admitted the fact that said property has been purchased by Applicant No.1 in name of Plaintiff who was minor at that time. The Plaintiff was 11-year-old at that time. The Applicants submit that on behalf of Plaintiff the Applicant No.1 was put into physical, peaceful and vacant possession of suit property. The Applicants submit that the Applicant No.1 purchased the suit property in name of Plaintiff for the benefit of his family."

23. Thus by seeking entry in the suit, Respondent Nos.5 and 6 want to assert their ownership right against Petitioner-plaintiff over the suit property.

24. The cause of action for filing the suit by Petitioner-plaintiff, as pleaded in para-13 of the plaint, is execution of registered sale-deed by Respondent /Defendant Nos.1.1 to 1.5 on 30 October 2018 in favour of Respondent/Defendant Nos. 2 to 4. For this cause of action, Petitioner-plaintiff has essentially sought to challenge the sale-deed dated 30 October 2018 executed in favour of Respondent/Defendant Nos. 2 to 4 by seeking a declaration that

the same is not binding on him. It is in the context of this challenge to the transaction of the year 2018 in favour of Respondent/Defendant Nos.2 to 4 that the Petitioner-plaintiff has sought a declaration that he is the owner of the suit property by virtue of the sale-deed dated 26 November 1992. Thus the entire *lis* in the suit is about validity of acquisition of ownership rights by Respondent/Defendant Nos.2 to 4 by virtue of sale-deed dated 30 October 2018.

25. By seeking their impleadment in the suit, Respondent Nos. 5 and 6 now want to challenge right of the Petitioner-plaintiff as owner of the suit property by asserting that the father is the real owner as he paid the entire amount of consideration. Thus an altogether distinct cause of action is now sought to be added in the suit by seeking an entry by Respondent Nos.5 and 6. It is not the case of Respondent Nos. 5 and 6 that the issue of validity of sale transaction dated 30 October 2018 executed in favour of Respondent/Defendant Nos. 2 to 4 cannot be determined in their absence. It is also not their contention that their presence is necessary to decide the validity of sale-deed dated 30 October 2018. The case pleaded by them in their impleadment application is altogether different. The impleadment is sought on twin premises, firstly that the father purchased the property in the name of Petitioner-plaintiff and therefore father is the real owner. Secondly, a family compromise was agreed on 25 August 2019 under which

Petitioner-plaintiff agreed to gift the suit property in mother's name. It is on these grounds that impleadment was sought in the suit by Respondent Nos. 5 and 6. In my opinion, both the issues are completely foreign to the issue of validity of sale-deed dated 30 October 2018 executed in favour of Respondent/Defendant nos. 2 to 4. It therefore does not appear to me that Respondent Nos. 5 and 6 are necessary parties to the suit.

26. The Trial Court has emphasized necessity of avoiding multiplicity of litigation as a reason for impleadment of Respondent Nos. 5 and 6. True it is that the Court shall endeavor to avoid multiplicity of litigation by permitting necessary parties to be impleaded in a pending suit. However, at the same time, the objective of avoidance of multiplicity of litigation cannot result in creation of complications in a pending suit. Similarly under the guise of avoiding multiplicity of litigation, the added parties cannot be permitted to change the nature of suit.

27. In the present case, it clearly appears that entry of Respondent Nos.5 and 6 would alter the nature of the suit by adding a facet of determination of issue about the real ownership of the suit property between Petitioner-plaintiff and Respondent Nos. 5 and 6, to which dispute Respondent Nos.2 to 4 would be strangers. Thus original contest in the Suit between the son and subsequent purchasers would be altered to a contest between son

and parents. Court will have to first decide who amongst the son and parents are the real owners of suit property and only after deciding that issue, the Court can proceed to touch the main issue of validity of purchase transaction by Respondent Nos. 2 to 4. Thus entry of Respondent Nos. 5 and 6 would require the Court to adjudge an additional and independent issue about the real ownership of the suit property out of a sale transaction dated 26 November 1992. If entry of a third party forces the Court to formulate additional issue(s) independent of the issue(s) arising between the original parties to the suit, impleadment of such parties should normally be avoided. This would be especially true where the original defendants to the suit become stranger for determination of such additional issue(s).

28. In my view, therefore mere avoidance of multiplicity of litigation could not have been a reason to direct impleadment of Respondent Nos. 5 and 6 as parties to the suit as their entry not only creates complication in the suit but changes its very nature.

29. Respondents Nos. 5 and 6 desired their impleadment as Plaintiffs to the suit. Perusal of the impugned order indicates that the Trial Court has not taken this aspect into consideration. Infact the entire order does not disclose any application of mind to the prayer for impleadment as Plaintiffs. The Trial Court has proceeded to decide the application without noticing the fact that

the impleadment was sought by Respondent Nos.5 and 6 as Plaintiff No.2 and Plaintiff No.3. Though the Trial Court has not allowed their entry in the suit as Plaintiffs, let us momentarily assume if Respondent Nos. 5 and 6 were to be added as Plaintiffs to the suit. If Respondent Nos. 5 and 6 are allowed to be added as Plaintiffs, there would be two sets of Plaintiffs (son and parents) seeking relief against each other about ownership of property. There is yet another interesting facet to their prayer for addition as Plaintiffs. The Petitioner-plaintiff has sought following declaration in prayer clause (b)

> "बी) वादी हे दिनांक २६—११—१९९२ रोजीच्या दस्त क्रं. ४४४/१९९२ अन्वये रितसर कायदेशिरपणे नोदंविलेल्या खरेदीखतानुसार मालक झाले आहेत असा जाहीर ठराव करुन मिळावा."

30. Prayer clause (b) to the plaint can be translated as under :

> (b) It can be declared that Plaintiff has become owner by virtue of sale-deed dated 26/11/1992 validly and legally registered as Deed No.444/1992."

31. If prayer of Respondent Nos. 5 and 6 to be added as Plaintiffs Nos. 2 and 3 was to be accepted, and if the suit is to be decreed in terms of prayer clause (b), the same would result in issuance of a declaration to the effect that all of the three Plaintiffs (son as well as parents) are owners of the property. Thus without putting the question of acquisition of ownership rights in the suit property by the father by virtue of payment of consideration for

sale-deed dated 26 November 1992, the father will get a declaration to the effect that he has become owner of the suit property. It is not even an assertion of Respondent Nos. 5 and 6 that the mother is the owner of the suit property. Thus, addition of the mother (Respondent No.6) as Plaintiff No.3 as desired in the impleadment application would completely frustrate/complicate prayer clause (b) wherein the mother would be seeking a declaration of ownership in the suit property by virtue of sale-deed dated 26 November 1992, in absence of any assertion that she indeed acquired any ownership rights by virtue of the said sale-deed. It is thus more than apparent that entry of Respondent Nos. 5 and 6 as Plaintiffs to the suit would not only facilitate declaration in their favour as owners of the suit property without determination of such a issue by the Court, but will also complicate/frustrate the prayers in the plaint.

32. I have therefore no hesitation in holding that the order passed by the Trial Court suffers from the vice of non-application of mind in various areas. It ignores the fact that impleadment was sought by Respondent Nos.5 and 6 as Plaintiffs to the suit. It only decides that the father is a necessary party and does not touch upon the issue whether mother is also a necessary party or not. The order directs impleadment of only one '*party*', when infact both the '*parties*' had sought impleadment. The order does not clarify the capacity in which Respondent Nos.5 and 6 are to be added as parties to the suit. Additionally, the reasoning adopted by the Court

for allowing impleadment of Respondent Nos.5 and 6 is completely flawed and therefore the impugned order passed by the Trial Court is unsustainable.

33. What remains now is to deal with the judgment cited by Mr. Wakankar:

(i) In ***Milind Dattatreya Sugavkar*** (supra), the suit was filed by a member of Co-operative Society challenging Notice issued by the Municipal Corporation for demolition of the unauthorised structure. Society filed an application seeking impleadment as a party defendant in the suit, which was allowed by the Trial Court. In this factual background, this Court held in para-9 of the judgment as under :

> "9. The petitioner contended that the instant case presents identical fact situation because even here there is no case of collusion between the petitioner and the Corporation and the society has no direct interest in the subject-matter of the litigation as no relief is claimed against it. I am unable to agree with the petitioner. In Ramesh Kundanmal's case (supra), the Supreme Court had before it two chattels in which respondent 2, the lessee had no interest. It can never be said that the society would not have interest in removing the unauthorised construction which according to the society is carried out in the compulsory open space. If it is allowed to stand the society may be embroiled in some other litigation. The said alleged unauthorised structure may also lead to F.S.I. violations. The impact of the said notice is on

> the society's property. In this case, the society is a necessary party not merely because it claims to have the necessary record or evidence, but because, the society will be bound by the order which will be passed by the Court and, therefore, its presence will be necessary to effectually and completely settle the issues involved. The society is bound to be affected by any order passed in the suit. The society certainly has direct interest in the property, particularly in the common open space where according to the society, the unauthorised construction stands. The facts of this case, therefore, materially differ from the facts in Ramesh Kundanmal's case (supra)."

Thus in ***Milind Dattatraya Sugavkar***, the Societies' interest were affected as it is the owner of the property and unauthorised structure involved FSI violation. Additionally, the Society had the necessary records and evidence and would be bound by the orders passed by the Court. In the light of these facts, this Court upheld the order of the Trial Court and permitted Society to be impleaded in the suit. In that case, Society did not claim any independent right against the Plaintiff which is the case in the present suit. Here, Respondent Nos.5 and 6 are claiming ownership rights against the Plaintiff, which is not the issue involved in the suit. Thus, the facts in the case of ***Milind Dattatreya Sugavkar*** are entirely different and the judgment has no application to the present case.

(ii) In ***Kashibai Waman Patil*** (supra), the suit was instituted by Plaintiffs seeking a declaration of ownership and possession of

the property and challenged various agreements executed in respect of the suit property. Third party partnership firm filed Chamber Summons seeking impleadment on an apprehension that the Plaintiffs were likely to withdraw or abandon the suit and enter into compromise with the Defendants with regard to the suit property. This Court held that there was no *lis* between the Plaintiffs and the Applicants seeking impleadment in the suit. The Court held in para-18 as under :

> "18. Moreover, the general rule in regard to impleadment of parties is that the plaintiffs in a suit being dominus litis may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiffs. Of course, this general rule is subject to the provisions of Order 1, Rule 10, Sub-rule 2 of the CPC by which the Court is given the discretion to add as a party any person who is found to be a necessary party or proper party. In my view, the applicants are neither a necessary party nor proper party to the suit."

This Court ultimately rejected the Chamber Summons for impleadment with costs. Thus, the judgment in ***Kashibai Waman Patil***, far from assisting the case of Respondent nos. 5 and 6, actually militates against them.

34. After considering the entire conspectus of the case, I am of the view that the suit can be effectively decided in absence of Respondent Nos. 5 and 6. If Respondent No.5 indeed believes that he is the actual owner of the suit property, he can sue the Petitioner-plaintiff independently and seek a declaration to that effect. In the event of the present Suit being compromised, the compromise decree will not be binding upon Respondent Nos. 5 and 6. They can always institute their own independent suit not only against Petitioner-plaintiff but also against other Defendants in the suit and challenge not just the 2018 sale transaction in favour of Respondent/Defendant Nos. 2 to 4 but also seek a declaration that the compromise entered into by the Petitioner-plaintiff in the present suit would not bind them. Alternatively, Respondent No.5 and 6 can claim a share in the amounts received by Petitioner-plaintiff while compromising the suit after establishing themselves to be the true owners of the suit property. Thus refusal of entry to Respondent Nos. 5 and 6 in the suit instituted by Petitioner-plaintiff would not render them remediless. On the contrary, their entry in the suit would change its very nature and create complications in the pending suit. The Trial Court has not considered all these aspects while passing the impugned order, which suffers from various infirmities as discussed above.

35. In the result, I find the impugned order dated 10 January 2022 passed by the Trial Court to be indefensible. The

18 August 2023.

Writ Petition is accordingly allowed. The order dated 10 January 2022 passed by the 7th Additional Judge, Small Causes Court and Joint Civil Judge Senior Division, Pune on application at Exhibit-62 is set aside and the application filed by Respondent Nos.5 and 6 at Exhibit-62 stands rejected.

36. Rule is made absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.