

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3502 OF 2026

Madhvi Sanjay Bramhane
Age : 48 years, Occ : Household,
Resident of Flat No. 8, 5th Scheme,
Saibaba Nagar, Mahakali Road,
CIDCO, Nashik.

...Petitioner

Versus

1. Nashik Municipal Corporation
Nashik, through its Commissioner
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
2. Asha Chandrakant Wagh
Age : 53 years Occ :- Household,
Resident of 5th Scheme, Ashadh Sector,
Saibaba Nagar, Mahakali Road,
CIDCO, Nashik.

...Respondents

Mr. Sanjay P Shinde, for the Petitioner.
Mr. Rohit Sakhadeo, for Respondent No. 1.
Mr. Shrirang Katneshwarkar i/b Mr. Wasim Sayyed, for
Respondent No. 2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 18th MARCH 2026
PRONOUNCED ON : 08th JUNE 2026

JUDGMENT:

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

2. This petition under Article 227 of the Constitution of India, calls in question the legality, propriety and correctness of an order dated 03rd March, 2025 passed by the learned Civil Judge, Nashik whereby an application preferred by the Respondent No. 2 – a third party to implead her as a party defendant to the suit instituted by the petitioner-plaintiff against Nashik Municipal Corporation ('the Corporation') - Respondent No.1/Defendant No.1, came to be allowed and the petitioner was directed to add the Respondent No. 2 as a party defendant to the said suit.

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

3.1 The plaintiff is the owner of Flat No. 8, located on the 2nd Floor of Krishna Apartment, situated on Plot Nos. 15 and 16, Sector, AF-2, CIDCO, Nashik ('the suit flat').

3.2 The plaintiff claimed to have purchased the suit flat under an instrument dated 04th March, 2006. The condition of the suit flat is the same as it obtained on the

date of its purchase by the plaintiff. There has been no unauthorized development/addition or alteration therein.

3.3 Yet, the Corporation (D-1/R-1) addressed notices to the plaintiff, falsely alleging encroachment and unauthorized construction. An appropriate reply was given to those notices. Nonetheless, the Defendant No. 1 threatened to demolish the structure by addressing a final notice dated 27th January, 2021. Thus, the plaintiff was constrained to institute the suit seeking declaration that, the said notice dated 27th January, 2021 is illegal, null and void and for the consequential relief to restrain the Defendant No. 1 from acting on the basis of the said notice dated 27th January, 2021.

3.4 The Respondent No. 2 filed an application seeking impleadment in the suit, purportedly under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 ('the Code') (Exh. 24) asserting *inter alia* that, the Respondent No. 2 had purchased Flat No. 4 in the Krishna Apartment under an instrument dated 05th March, 2014. The plaintiff has committed encroachment over the common terrace and parking area. The Respondent No. 2 had thus lodged

complaint with the Respondent No. 1 – Corporation on 04th January, 2021 and 11th June, 2021. Another complaint was lodged on 02nd July, 2021.

3.5 As the Respondent No. 1 – Corporation dithered, the Respondent No. 2 was constrained to institute a suit against the Respondent No. 1 – Corporation. On account of the unauthorized permanent structure erected on the terrace of the building by the plaintiff, there is leakage in the flat of the Respondent No. 2. On account of drainage water and foul smell, the health of the occupants of Flat No. 4, has been jeopardized. Therefore, the Respondent No. 2 is a necessary party to the suit seeking declaration of illegality and nullity qua the notice issued by the Planning Authority, essentially at the instance of the Respondent No. 2.

3.6 The plaintiff resisted the application. It was *inter alia* contended that, the Respondent No. 2 has instituted another suit i.e. RCS No. 239/2024. Pursuant to the order passed by the District Court, both the suits i.e. RCS No. 239/2024 instituted by the Respondent No. 2 and the instant suit being RCS No. 128/2021 instituted by the

plaintiff are transferred to one and the same Court for disposal, in accordance with law. Therefore, the impleadment of the Respondent No. 2 as a party defendant to the suit was wholly unwarranted.

3.7 By the impugned order, the learned Civil Judge was persuaded to allow the application finding the Respondent No. 2 to be a proper party.

3.8 Being aggrieved, the plaintiff/petitioner has invoked the writ jurisdiction.

4. I have heard Mr. Sanjay Shinde, the learned Counsel for the petitioner, Mr. Rohit Sakhadeo, the learned Counsel for Respondent No. 1, and Mr. Shrirang Katneshwarkar, the learned Counsel for the Respondent No. 2. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. Mr. Shinde, the learned Counsel for the petitioner, strenuously submitted that, the Respondent No. 2 is neither a necessary nor a proper party. The learned Civil Judge has committed a gross error in law in directing the

impleadment of the Respondent No. 2 opining that, the Respondent No. 2 is a proper party.

6. Amplifying the submissions, Mr. Shinde would urge that, the plaintiff is a *dominus litus*. The plaintiff cannot be forced to litigate with a party against whom the plaintiff does not claim any relief. In a suit for declaration of legality and validity of a notice of demolition issued by a Planning Authority, only the Planning Authority is the necessary party. No other person can seek to intervene. To allow a third party to intervene in such a suit would necessarily expand the scope of such suit, wherein only the legality and validity of the notice issued by the Planning Authority, is required to be adjudicated. To buttress these submissions, Mr. Shinde placed reliance on the judgments of the Supreme Court in the cases of *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & ors.*¹, and *Mohamed Hussain Gulam Shariffi Vs. Municipal Corporation of Greater Bombay & ors*².

7. In opposition to this, Mr. Katneshwarkar, the learned Counsel for Respondent No.2, would submit that,

1 (2010) 7 SCC 417

2 (2020) 14 SCC 392

the exercise of discretion by the trial Court, in the facts of the case, does not warrant any interference in the supervisory jurisdiction. The Respondent No. 2 is not a busybody. In fact, the Respondent No. 2 is the principal aggrieved party as the Respondent No. 2 has been bearing the brunt of the unauthorized construction brazenly carried out by the plaintiff. On account of the erection of unauthorized structure on the terrace of the building, the Respondent No. 2 is facing severe leakage problem affecting the health and comfort of the occupants of Flat No. 4. It was the Respondent No. 2 who had lodged complaints with the Respondent No. 1 – Corporation. Due to inaction on the part of the Respondent No. 1 – Corporation, the Respondent No. 2 was constrained to institute the suit before the Civil Court. In such circumstances, it can hardly be disputed that the Respondent No. 2 has an interest in the lis nay she would be adversely affected by the decree that may be eventually passed in the suit. Thus, this Court may not interfere with the impugned order.

8. I have given anxious consideration to the rival submissions canvassed across the bar. 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 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 is 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 a person is warranted for an effectual and complete adjudication of the dispute, though such person is not a necessary party.

9. The distinction between a necessary and proper party is well marked. In the case of *Mumbai International Airport Pvt. Ltd. (supra)*, on which reliance was placed by Mr. Shinde, the Supreme Court expounded the distinction between the 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 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 disputes 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.”

10. In the case of *Kasturi Vs. Iyyamperumal & ors.*³, a three-Judge Bench of the Supreme Court enunciated that, the necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy 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 in the suit is claimed against such person.

3 (2005) 6 SCC 733

11. In the case at hand, the trial Court was persuaded to add the Respondent No. 2 as a proper party, though not a necessary party. In the case of *Mumbai International Airport Pvt. Ltd. (supra)*, the Supreme Court also expounded the considerations which ought to weigh with the Court in exercising discretion to add a person as a proper party. The observations in Paragraph Nos. 24.4 and 25 are material and, hence, extracted below :-

“**24.4** If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides 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 court finds him to be a proper 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. For example, if `D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of `P' representing that he is the co-owner with half share, and `P' files a suit for specific performance of the said agreement of sale

in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.”

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.”

(emphasis supplied)

12. The Supreme Court has in terms observed that, if a third party seeks impleadment as a proper party and the Court finds that, the addition will alter the nature of the suit and introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, where the Court does not want to widen the scope of the suit.

13. On the aforesaid touchstone, reverting to the facts of the case at hand, the following facts emerge. First and foremost, and rather incontrovertibly, the plaintiff and Respondent No. 2 are the occupants of the apartments in Krishna Apartments' building. The plaintiff is in the occupation of Flat No. 8, the Respondent No. 2 is in the occupation of Flat No. 4. Second, it is the grievance of the Respondent No. 2 that, the plaintiff has erected unauthorized structure on the common terrace of the building which has caused the leakage into Flat No. 4, located beneath the said common terrace. Thirdly, the Respondent No. 2 has lodged multiple complaints with the Respondent No. 1 – Corporation to initiate action against the plaintiff. Fourthly, aggrieved by the perceived inaction and soft pedaling by the Respondent no. 1 – Corporation,

the Respondent No. 2 has also instituted a suit seeking directions against the Respondent No. 1 – Corporation to discharge its statutory duties.

14. The question of the Respondent No. 2 being a proper party to the suit was required to be appreciated in the light of the aforesaid facts. It is true, the primary relief in the suit is qua the notice issued by the Planning Authority, especially its legality and validity. It is equally true that, the Respondent No. 1 – Corporation is resisting the suit by filing written statement. Yet, that by itself, does not imply that, the Respondent No. 2 is not a proper party. In fact, it is the Respondent No. 2 who has been instrumental in initiation of the action by the Respondent No. 1 – Corporation against the plaintiff.

15. What is of critical salience is the fact that the Respondent No. 2 does not claim that she has been insisting for initiation of action against the plaintiff espousing a public cause or enforcing the civic discipline but as a person who is the victim of the alleged unauthorized erection of the structure and the illegal developments allegedly carried out by Respondent No. 2. In

such a situation, in the considered view of this Court, the Court would be justified in exercising the discretion to allow such aggrieved party to participate in the suit as by no stretch of imagination it could be said that such a party is a busybody or such a party has an axe to grind against the plaintiff and intends to expand the scope of the suit.

16. A profitable reference in this context can be made to a judgment of a learned Single Judge of this Court in the case of *Chandrakant Dharma Bhonu Vs. Pandurang Ramchandra Dandekar & anr.*⁴, wherein in some-what similar fact-situation, the petitioner therein had made a grievance to the Municipal Corporation regarding the unauthorized development and on the strength of the said complaint, the Municipal Corporation had issued notices under the Mumbai Municipal Corporation Act, 1888 ('the Act, 1888'). In that context, this Court held that, having regard to the provisions of Order I Rule 10 of Code, 1908, it cannot be said that, the application for impleadment that was moved on behalf of the petitioner was misconceived. The petitioner was directly and substantially concerned with and affected by the proceedings before the City Civil

4 2004 SCC OnLine Bom 152

Court for more than one reason. The action of carrying out an allegedly unauthorized construction and the alleged encroachment by the first respondent directly affected the rights of the petitioner. Secondly, it is at the behest of the petitioner and, in view of the proceedings which were instituted before this Court, that the Municipal Corporation has almost grudgingly resorted to its statutory powers under the Act, 1888. This Court thus allowed the chamber summons for impleadment of the petitioner therein as a party defendant to the suit.

17. Reliance placed by Mr. Shinde on the judgment of the Supreme Court in the case of *Mohamed Hussain Gulam Ali Shariffi (supra)*, appears to be inapposite. In that case, the Respondent Nos. 2 and 3 therein sought impleadment in a suit of the present nature, on the ground that, they had some interest in the suit house. They had allegedly instituted a suit seeking specific performance of an agreement in relation to the suit house and, thus, claimed to be the necessary parties. In the backdrop of such a fact-situation, the Supreme Court observed as under : -

“12. In our considered opinion, having regard to the nature of the controversy, which is the subject-

matter of the suit, Respondent Nos. 2 and 3 are neither necessary nor proper parties. As would be clear from mere perusal of the plaint, the basic question, which is required to be decided in the suit, is whether notice issued under Section 351 of the Act by Respondent 1 (Corporation) to the appellant is legally valid or not [see prayer (a) in the plaint – p. 251 of Volume II of SLP Paper Book].

13. To decide this question, in our considered opinion, the only necessary and proper party to the suit is the Mumbai Municipal Corporation, Greater Mumbai, i.e., Respondent 1, who has issued such notice, and for deciding this question either way, the presence of Respondent 2 and 3 is not at all required. In other words, the suit can be decided even in the absence of Respondent 2 and 3.

14. It is a settled principle of law, which does not need any authority to support the principle, that the plaintiff being a dominus litis cannot be forced to add any person as party to his suit unless it is held keeping in view the pleadings and the relief claimed therein that a person sought to be added as party is a necessary party and without his presence neither the suit can proceed and nor the relief can be granted. It is only then such a person can be allowed to become party, else the suit will have to be dismissed for non-impleadment of such necessary party. Such does not appear to be a case here.”

18. The aforesaid pronouncement does not govern the facts of the case at hand. As noted above, the Respondent No. 2 herein claims to be a directly affected party. Moreover, the Respondent No. 2 has been relentlessly pursuing the alleged illegal acts on the part of plaintiff in the perceived capacity of the victim of those alleged unauthorized and illegal acts. From this standpoint, the exercise of discretion by the trial Court to implead the Respondent No. 2 as a party defendant, cannot be faulted at.

19. Resultantly, the petition deserves to be dismissed.

20. Hence, the following order.

:: O R D E R ::

i] The Writ Petition stands dismissed.

ii] Rule discharged.

No costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Shinde, the learned Counsel for the petitioner, seeks continuation of the ad-interim relief dated 25th July, 2025.

Having regard to the nature of the order passed by the trial Court and the reasons which weighed with this Court in affirming the order passed by the trial Court, the oral application for continuation of ad-interim relief stands rejected.

[N. J. JAMADAR, J.]