

Order Under Exhibit 22

1. This order disposes of the application at Exh.22 by the third party, Shri Ashokbhai Dayalbhai Prajapati, Managing Partner of M/s. Aariya Realty (hereinafter, “the Applicant”), seeking impleadment as a party/defendant in the present suit, which is a suit filed by the Plaintiffs against the Defendants for partition and separate possession of ancestral/joint family agricultural lands. The Plaintiffs have filed their written reply/objections to the Application Exhibit 22 vide Exhibit 26 while opposing the application. The Defendants have not opposed the application or filled any reply to the application.

2. I have heard the learned Advocate for the Applicant and the learned Advocate Shri P. N. Thakor for the Plaintiffs. I have also perused the pleadings on record, the application, the reply thereto, and the list of documents produced along with the application.

3. The averments in the application filled by the Current applicants, shortly stated, are as follows:

(a) The Applicant states that a portion of the suit property — namely, agricultural land situated at Mouje Sikandarpura, Taluka Waghodia, District Vadodara, bearing Old Block/Survey No. 42, New Block/Survey No. 58, admeasuring 1-39-62 Hectare-Are-Sq.Mtrs.; came to be included in the Draft Town Planning Scheme under T.P. No. 28/C, and after deduction therein, Final Plot No. 71 admeasuring approximately 8,377.00 sq. metres of non-agricultural open land came to be allotted.

(b) In July 2022, the Applicant agreed to purchase the said Final Plot. As the land then bore “new tenure” (*navi sharat*) restrictions, it was agreed that the owners/present Defendants would first obtain title clearance and thereafter obtain the requisite permission of the Collector for conversion of tenure (*sharatfer*), whereupon the sale would be completed.

(c) In July 2022, a public notice inviting objections in respect of title clearance was published in the newspapers; a search was caused to be taken at the office of the Sub-Registrar through the Applicant's Advocate; and on 17.12.2022 a Title Clearance Certificate came to be issued in respect of the said land.

(d) Thereafter, the Applicant purchased the said land from the present Defendants for valuable consideration by Registered Sale Deed No. 926/2024 dated 07.02.2024, and

asserts that he is the owner, in possession, and in enjoyment of the said land, and a *bona fide* purchaser for value.

(e) The Applicant asserts that he had no knowledge of the pendency of the present suit; that he came to learn of it only recently and, upon enquiry, ascertained that the suit is pending adjudication before this Court; and that the Plaintiffs have not taken any steps to join him as a party notwithstanding that a portion of the suit property stands vested in him.

(f) The Applicant contends that he is a necessary and proper party; that the decree in the suit is capable of affecting him; that if he is not joined he will suffer grave and irreparable loss incapable of being compensated in money, whereas neither the Plaintiffs nor the Defendants will suffer any prejudice; that his joinder will not alter the nature or frame of the suit; and that his joinder will facilitate a complete and effectual adjudication of the controversy.

(g) The applicant in order to support his application has attached the copy of the Registered sale deed No 926/2024 executed before the Sub-registrar officer at Vaghodia, Vadodara dated 07/02/2024 along with the Title clearance report and the advertisement published in the Sandesh newspaper, copy of the notice and search office report receipt of the, Sub-registrar officer at Vaghodia, Vadodara vide Exhibit 24.

4. The Plaintiffs, in their written reply vide Exb. 26, oppose the application on the following grounds:

(a) That the averments in the application are not admitted and are false; that the application is not legally maintainable; and that no lawful cause of action has arisen in favour of the Applicant to prefer the same.

(b) That paragraph-wise, each of the Applicant's assertions regarding the purchase, the title clearance, his status as owner/possessor and as a *bona fide* purchaser, his necessity as a party, and the relief prayed for, is denied as false and is not binding upon the Plaintiffs.

(c) That the true position is that the Plaintiffs have instituted the present suit against the Defendants for partition of ancestral (*kautumbik vadilo parjit*) agricultural lands in which the Plaintiffs have a right by inheritance under Hindu Law; that all the Defendants appeared and filed a joint written statement together with an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint; that the said application came to be

rejected by this Court; and that the Plaintiffs, being aged persons, are sought to be deprived of their rights by the Defendants.

(d) That the acts of the Defendants are not binding upon the Plaintiffs, and that in the larger interest of justice the present application deserves to be dismissed.

POINTS FOR DETERMINATION

5. Upon the above pleadings, the following points arise for my determination:

(i) Whether the Applicant, being a transferee of a portion of the suit property under a registered sale deed executed by the Defendants, is a necessary and/or proper party to the present suit for partition within the meaning of Order I Rule 10(2) of the Code of Civil Procedure, 1908?

(ii) Whether the transfer, if made during the pendency of the suit, and therefore attracting Section 52 of the Transfer of Property Act, 1882, operates to disentitle the Applicant from being impleaded?

(iii) What order?

V. THE STATUTORY FRAMEWORK

6. **Order I Rule 10(2), CPC** — The sub-rule empowers the Court, at any stage of the proceedings, either upon or without the application of either party, to order 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.

7. **Order XXII Rule 10, CPC** — Where there has been an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

8. **Section 52, Transfer of Property Act, 1882** — The doctrine of *lis pendens*. A transfer of immovable property which is the subject matter of a pending suit is not rendered void; it is rendered subservient to, and the transferee is bound by, the decree eventually passed. The transferee *pendente lite* thereby becomes a representative-in-interest of his transferor.

9. **Section 44, Transfer of Property Act, 1882** — A transferee of a share of a co-owner acquires, as against the other co-owners, the transferor's right to joint possession and to enforce a partition, subject to the conditions and liabilities affecting the share transferred.

10. **Section 151, CPC** — The inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

THE LAW LAID DOWN BY THE HON'BLE SUPREME COURT OF INDIA

11. The principles governing an application of this nature are by now well settled by a consistent line of authority of the Hon'ble Supreme Court of India. It is useful to notice them.

12. ***Razia Begum v. Sahebzadi Anwar Begum, AIR 1958 SC 886*** — A Constitution Bench laid down that the Court has ample power under Order I Rule 10(2) to add a party; that in suits relating to property the Court will ordinarily require the person to be added to have a direct interest in the subject matter of the litigation, that is to say, a legal interest and not merely a commercial or emotional one; and that the discretion is a judicial discretion to be exercised in the light of all the facts.

13. ***Khemchand Shankar Choudhari v. Vishnu Hari Patil, (1983) 1 SCC 18*** — Their Lordships held that a transferee *pendente lite* of an interest in immovable property forming the subject matter of a suit is a *representative-in-interest* of the party from whom he acquired that interest; that Order XXII Rule 10 expressly recognises his right to be impleaded and to be heard before any order is made; and, in terms which are directly applicable here, that although such a transferee may suffer by default if he does not apply, **if he does apply to be impleaded and heard, he has to be so impleaded and heard, and cannot be turned out.** The judgment expressly places a transferee *pendente lite* on the same footing, for this purpose, as an heir, a legatee, or an Official Receiver. It is significant that this was itself a case arising out of *partition* proceedings, and that the Court further held that equities must be worked out in favour of such a transferee at the stage of partition.

14. ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524*** — The Apex Court explained that the object of Order I Rule 10(2) is to bring before the Court all persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence and at the same time without any protraction, inconvenience or multiplicity of proceedings; and that the question is whether the intervener's presence is

necessary to enable the Court effectually and completely to adjudicate upon the questions involved.

15. ***Savitri Devi v. District Judge, Gorakhpur, (1999) 2 SCC 577*** — The Apex Court have recorded that Purchasers under sale deeds executed *pendente lite*, and even allegedly in breach of an injunction, were held entitled to be impleaded, the Court holding that to throw out their application without adjudicating the disputed questions would only compel them to institute a separate suit and thereby beget a multiplicity of proceedings, which Order I Rule 10 is designed to avoid.

16. ***Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403*** — The Apex Court observed that a transferor *pendente lite* may have no surviving interest in defending the title, may defend it indifferently, or may even collude with the opposite party, in which event the interest of the purchaser *pendente lite* would go unrepresented; that although the plaintiff is under no obligation to implead an alienee *pendente lite*, under Order XXII Rule 10 such an alienee *may* be joined; and that the discretion, being a judicial one, would *ordinarily* be exercised in favour of joining the alienee so as to enable him to protect his interest.

17. ***Kasturi v. Iyyamperumal, (2005) 6 SCC 733*** — A three-Judge Bench held that in a suit for *specific performance* of an agreement to sell, a stranger to the contract setting up an independent, adverse and paramount title is neither a necessary nor a proper party, since the scope of such a suit is confined to the enforcement of the contract *inter partes*. I have considered this authority with care. It is, with respect, **distinguishable**: the present suit is not one for specific performance, but for partition; and the Applicant does not set up a title paramount and adverse to the parties to the suit, but a title *derived from the Defendants themselves*, who are parties on record. The ratio in *Kasturi* therefore has no application to a claimant standing in the shoes of a party to the suit.

18. ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417*** — The Apex Court comprehensively restated the law. Order I Rule 10(2) is not about the *right* of a non-party to be impleaded, but about the *judicial discretion* of the Court to add or strike out parties at any stage. A **necessary party** is one in whose absence no effective decree can be passed at all. A **proper party** is one whose presence enables the Court to completely, effectively and properly adjudicate upon all the matters in controversy, though no relief may be

claimed by or against him. The discretion, it was emphasised, is a *sound discretion guided by law* — “governed by rule, not by humour; not arbitrary, vague and fanciful, but legal and regular” — and impleadment must rest upon a present and demonstrable interest, not a mere future expectation.

19. *A. Nawab John v. V. N. Subramaniam*, (2012) 7 SCC 738 — The Apex Court recorded that the preponderance of its own opinion is that **a pendente lite purchaser’s application for impleadment should normally be allowed, or at any rate “considered liberally”**; and that the effect of Section 52 of the Transfer of Property Act is not to render transfers made during the pendency of a suit void, but only to render them subservient to the rights of the parties as eventually determined.

20. *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, (2013) 5 SCC 397 — The Apex Court have recorded that Even where the transferee had purchased with notice of the pendency of the suit, and even in the face of a subsisting injunction — and even after holding that he was *not a bona fide* purchaser — the Hon’ble Supreme Court held that he was entitled to be brought on record as a party-defendant, invoking Order XXII Rule 10 where Order I Rule 10 alone might not suffice. Their Lordships reasoned that a transferee *pendente lite* whose interest in the subject matter is *substantial and not merely peripheral* ought to be added as a defendant, lest he suffer prejudice on account of the transferor losing all interest in defending the litigation after the transfer, or colluding with the opposite side. Section 52 binds him to the decree; it does not silence him before it is passed. The Court was careful to add that such joinder does not confer upon the transferee any higher right than his transferor possessed, and that he takes the property subject to the result of the suit.

21. *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384, and *Sanjay Verma v. Manik Roy*, (2006) 13 SCC 608, are to the same effect on the operation of Section 52 and on the Court’s discretion to regulate impleadment so as to prevent the frame of the suit from being altered or the trial from being derailed.

22. *Kisan Uchattar Madhyamik Vidhyalay Samiti, Deoria and anr. Vs. Add. Dist.Judge, reported in AIR 1989 ALL 168*, the Honourable High Court has held that Provisions of Order 1 Rule 10(2) of the Code clearly empower the Court to implead any person as party suo motu, 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 effectively and completely to adjudicate upon and settle all the questions involved in the suit.

23 *Fatesinhrao P. Gaekwad Vs. Savjibhai Haribhai Patel reported in 1985 (1) GLR 14, the Honourable Gujarat High Court* has held that a necessary party is one without whom no order can be made effectively and proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

FINDINGS AND REASONS

24. **Point (i):** Applying the twin tests restated in *Mumbai International Airport*, I proceed to examine the Applicant's status.

25. It is not in dispute and indeed it is the Plaintiffs' own pleaded case that the land bearing Old Survey No. 42 / New Survey No. 58 of Mouje Sikandarpura, Taluka Waghodia, forms part of the suit property in respect of which partition is claimed. Equally, the execution and registration of Sale Deed No. 926/2024 dated 07.02.2024 by the present Defendants in favour of the Applicant is borne out by the documents produced with the application, and is not denied as a matter of fact by the Plaintiffs; what the Plaintiffs deny is its *efficacy* as against them, contending that the Defendants had no transferable right, title or share to convey.

26. That denial, however, is precisely the point. Whether the Defendants had any transferable share, and if so of what extent; whether the sale in favour of the Applicant conveyed anything and, if so, what; and how the Applicant's equities are to be worked out at the stage of partition; these are questions which lie at the very heart of this suit and which cannot be answered without the Applicant being before the Court. To decide them behind his back would be to decide them without hearing the very person whose interest they extinguish. It is trite that *no man ought to be condemned unheard*.

27. The Applicant does not assert a title *paramount and adverse* to the suit; he asserts a title *derived from the Defendants*, who are already arrayed on record. He therefore stands, in the eye of law, as their representative-in-interest *qua* the transferred portion — the very position which

Khemchand Shankar Choudhari holds *must* be recognised where the transferee himself applies. His interest is not remote, contingent or peripheral; it is a present, subsisting, registered interest in a specific and identified portion of the suit property, and it is *substantial* within the meaning of *Thomson Press*.

28. Further, and importantly, the Defendants having parted with their interest in the said Final Plot for consideration may well have little or no surviving incentive to defend the title to that portion with vigour. That is the very mischief which *Amit Kumar Shaw* and *Thomson Press* identify: the transferor, once paid, may defend indifferently or may compromise, and the transferee's interest, though bound by the decree, would go wholly unrepresented before it. The presence of the Applicant is therefore necessary to guard against that risk and to enable this Court “effectually and completely to adjudicate upon and settle all the questions involved in the suit”.

29. I am also alive to the consideration, emphasised in *Ramesh Hirachand Kundanmal* and *Savitri Devi*, of avoiding a multiplicity of proceedings. Were this application to be dismissed, the Applicant holding a registered sale deed over land which this Court may allot to the Plaintiffs would inevitably be driven to a separate suit. Two courts would then be seized of the same land and the same title, with the attendant risk of conflicting decrees. The scheme of Order I Rule 10(2) is designed to forestall exactly that result.

30. **Point (ii):** The Plaintiffs' principal objection is, in substance, that the transfer is hit by *lis pendens* and that the Defendants had nothing to convey. Both limbs of the objection, in my considered view, go to the *merits* of the suit and not to the *maintainability of the impleadment*.

31. As to *lis pendens*: it is settled beyond controversy vide *A. Nawab John*, *Sanjay Verma* and *Thomson Press* -that Section 52 of the Transfer of Property Act does not render a transfer made during the pendency of a suit *void*; it renders the transfer *subservient* to the rights of the parties as eventually determined by the decree. The transferee is bound by the decree; he is not thereby denuded of his right to be heard before it is passed. Indeed, in *Thomson Press* the transferee was held *not* to be a *bona fide* purchaser and had purchased in the teeth of an injunction, and yet his impleadment was directed. *A fortiori*, the present Applicant -who pleads a public notice, a search at the Sub-Registrar's office, and a Title Clearance Certificate dated 17.12.2022 obtained prior to purchase; cannot be shut out at the threshold.

32. As to the contention that the Defendants had no share to convey: that is the Plaintiffs' case, and it may well succeed at trial. But it is a case yet to be proved. A contested assertion on the merits cannot be treated as a proven fact for the purpose of refusing a hearing to the person whom that very assertion would ruin. To hold otherwise would be to determine the suit against the Applicant before he is permitted to enter it.

33. Nor does the joinder of the Applicant alter the nature, frame or cause of action of the suit. The suit remains a suit for partition. No new relief is introduced. What is added is a party whose interest in a portion of the corpus must, in any event, be reckoned with when the corpus comes to be divided — for, as *Khemchand Shankar Choudhari* holds, equities in favour of a transferee are to be worked out at the stage of partition, and Section 44 of the Transfer of Property Act recognises the transferee's standing in that regard.

34. The Plaintiffs' further submission that they are *dominus litis* and cannot be compelled to litigate against a person against whom they seek no relief is, as a general proposition, unexceptionable and finds support in *Mumbai International Airport*. But that proposition is not absolute. The same judgment makes clear that the Court retains a judicial discretion to add a proper party where his presence is required for a complete and effective adjudication. Where, as here, the proposed party holds a registered conveyance from the Defendants over an identified portion of the very corpus sought to be partitioned, the rule of *dominus litis* must yield to the larger requirement of a complete adjudication in one proceeding.

35. I am equally mindful of the caution in *Vidur Impex* that impleadment must not be permitted to derail or protract the trial. That concern is met by suitable conditions, which I propose to impose. The Applicant's entry is for the limited purpose of protecting his own derived interest; it does not permit him to reopen concluded stages, nor to raise a title higher than that of his transferors, nor to widen the lis.

36. In the result, I hold that the Applicant is a **proper party** and, having regard to the identified portion of the suit corpus that stands conveyed to him, is for practical purposes a **necessary party** -to the effectual and complete adjudication of this suit. Point (i) is answered in the **affirmative**, and Point (ii) in the **negative**, that is, against the Plaintiffs.

POINT (iii): ORDER

37. For the foregoing reasons, this Court passes the following order:

(i) The application at Exh. 22 preferred by the third party, Shri Ashokbhai Dayalbhai Prajapati (Managing Partner, M/s. Aariya Realty), under Order I Rule 10(2) read with Order XXII Rule 10 and Section 151 of the Code of Civil Procedure, 1908, is hereby **ALLOWED**.

(ii) The Applicant, Shri Ashokbhai Dayalbhai Prajapati, Managing Partner of M/s. Aariya Realty, is ordered to be joined as **Defendant No. 23** in Regular Civil Suit No. 94 of 2022.

(iii) The Plaintiffs are directed to carry out the consequential amendment to the plaint, incorporating the name, description and address of the newly added Defendant, within **fifteen (15) days** from the date of this order, and to file the requisite number of copies for service.

(iv) Upon the amended plaint being filed, summons/notice of the suit shall issue to the newly added Defendant in accordance with law, who shall be at liberty to file his written statement within the period prescribed by law.

(v) The impleadment hereby granted is **subject to the following conditions:**

(a) The addition of the Applicant as a Defendant shall not be construed as any expression of opinion on the merits of the rival contentions, including on the validity, efficacy or binding nature of Registered Sale Deed No. 926/2024 dated 07.02.2024, or on the question whether the Defendants possessed any transferable right, title, interest or share in the suit property. All such questions are expressly kept open for adjudication at the trial.

(b) The Applicant, standing as a transferee from the Defendants, shall be bound by the doctrine of *lis pendens* as embodied in Section 52 of the Transfer of Property Act, 1882, to the extent applicable, and shall not, by reason of his impleadment, acquire any right, title or interest higher or better than that which his transferors, the Defendants, are ultimately found to possess.

(c) The Applicant shall not be permitted to reopen any proceeding, issue or stage already concluded in this suit, nor to enlarge the scope of the suit or introduce any new cause of action. His participation shall be confined to the protection of the interest derived by him under the aforesaid sale deed.

(d) The Applicant shall cooperate in the expeditious disposal of the suit and shall not seek unnecessary adjournments. Any attempt to protract the proceedings shall be visited with appropriate costs.

(vi) The Registry/Nazir shall carry out the necessary corrections in the cause title and the register of the suit and in the C.I.S upon the amended plaint being filed.

(vii) Having regard to the facts and circumstances, there shall be **no order as to costs** of this application.

(viii) The suit shall be listed on for filing 28/07/2026 of the amended plaint and for further proceedings.

38. The application at Exh. 22 is disposed of accordingly. Order pronounced in open Court on this the 13th day of July, 2026

(_____)

**Principal Civil Judge,
Waghodia, District: Vadodara**

Place: Waghodia, Vadodara.

Date: 13/07/2026

