

MHBU040003812024



Reg.Civil Appeal No.20/2024

Zubaida Nasrin & others

Vs

Abdul Sattar

Order below Exh.19

1. This application is filed by the applicant Arbi Madarsa Pancha committee through it's President Ahsanullah Khan Rahmatullakhan under Order 1 Rule 10 read with Section 107 and Section 151 of the Civil Procedure Code to add it party as respondent No.2.
2. Appellants have filed their say at Exh.22 and given no objection to add applicant as respondent No.2.
3. Respondent has resisted the application by filing say at Exh.25. It is contended that the trial Court has decreed the suit for specific performance of contract in favour of respondent. It is contended that any stranger who is not party to the agreement is not and cannot be necessary or proper party to the suit/appeal and the application is liable to be rejected. It is contended that appellants have already filed application Exh.11 under Order 6 Rule 17 of the C.P.C. for amendment in written statement and same has been rejected by this Court. It is contended that, applicant is not necessary party to decide the controversy in question. Hence, requested to reject the application.
4. Mr.M.A.Inamdar, advocate for the applicant has submitted that, applicant has purchased the property in question from the deceased defendant i.e. the father of appellants. He submitted that applicant had no knowledge about the suit filed by the respondent

which was decreed. He submitted that now applicant came to know about the pendency of this appeal regarding the property purchased by the applicant. He submitted that therefore, applicant is necessary party for proper adjudication of the matter. Hence, he urged to allow the application. He relied upon the following authorities-

(i) ***Sushil Kumar Sukhbirsingh Chhatwal & others Vs Aurangabad Ginning and Pressing Factory & others, 2011 0 Supreme(Bom) 1131*** in which the Hon'ble Bombay High Court observed that since in a suit, for perpetual injunction filed by the applicant, respondent No.1 has a substantial interest in suit property, hence, respondent No.1 is required to be added as a party in appeal for complete and effectual disposal of proceedings.

(ii) ***Sumitra Anna Aware & others Vs Anusaya Rajaram Aware & others, 2012 0 Supreme (Bom) 261*** in which the Bombay High Court observed that it is trite that in terms of order 1 Rule 10 (2) of the Code, 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 name of any person whose presence before the Court is necessary in order to enable the Court effectively and completely adjudicate upon and settled all the questions involved in the suit, be added.

5. On the other hand, Mr.S.V.Agrawal advocate for the respondent has argued as per the reply and urged to reject the application. He relied upon the case ***Gurmit Sing Bhatia Vs Kiran Kant Robinson and others, 2019 GoJurius (SC) 753*** in which the Hon'ble Supreme Court observed that the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiff for specific performance of the contract between the original plaintiff and original defendant No.1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of

the plaintiff. The plaintiff cannot be forced to add party against whom he does not want to fight. If he does so, in that case it will be at the risk of the plaintiff.

6. I have thoughtfully considered the submission of both sides. Perused the application and say filed by the respondent as well as appellants. I have perused the authorities cited (supra) by the both sides.

7. I have respect to the observation in the authorities cited (supra) by the applicant but it is not helpful to it because facts are different.

8. This Court has already rejected the application Exh.11 filed by the appellant for amendment in written statement. Present application is arising from the same facts. Moreover, the trial Court has decreed the suit for specific performance of contract in which applicant was not party. It appears that present application is filed only to delay the hearing in appeal. In the light of observation of the Hon'ble Supreme Court in the case cited (supra) by the respondent present application is not maintainable and applicant is not necessary and proper party. It can avail the remedy which is available to it before the proper Forum. Therefore, application liable to be rejected. In result, I pass the following order.

ORDER

The application Exh.19 is hereby rejected with costs.

Date : 24.04.2026
Place: Khamgaon.

(G. B. Jadhav)
District Judge-2, Khamgaon

Certificate

I affirm that the contents of this P.D.F. file is correct, word to word as per original order.

Name of Court : District Judge-2, Khamgaon.

Name of Steno : G.P. Bhonde (Stenographer Grade-II)

Dictated on : 24.04.2026

Checked & Signed on : 24.04.2026

Decided on : 24.04.2026

Uploaded on : 24.04.2026