


MHKO070021462025 	<b><u>ORDER BELOW EXH.21 IN SPECIAL CIVIL SUIT NO. 91/2025.</u></b> Shubhangi Ramchandra Shinde Vs. Sulochana Shankar Gadkari and anr.,
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The application is filed by the third parties namely Alka Vilas Gadkari, Sujata Ramesh Aadulkar, Sujitkumar Vilas Gadkari and Vaishali Sanjay Chavan under Order I Rule 10(2) of the Code of Civil Procedure to add them as the defendants. The plaintiff has filed his say (Exh.24) and objected the application.

2. Heard learned advocate for the third parties and learned advocate for the plaintiff. Learned advocate for the third parties has submitted that the suit property is an ancestral property of the third parties and the defendants. The defendant No.2 was the first wife of deceased Vilas and defendant No.3 was their daughter. Defendant No.4 was the sister of deceased Vilas. He has further submitted that the third party namely Alka was second wife of deceased Vilas and other third parties are their children. It was pointed out that the present defendants had instituted Regular Civil Suit No.161 of 2003 against the third parties seeking permanent injunction restraining them from causing obstruction to their possession over the suit property. In the Second Appeal arising out of the decree passed in the said suit, the Hon'ble Bombay High Court held that the third parties, namely Sujata Ramesh Aadulkar, Sujitkumar Vilas Gadkari, and Vaishali Sanjay Chavan, are the illegitimate children of deceased Vilas and Alka. The Hon'ble High Court further held that they are co-sharers in the suit property. It was also submitted that the Hon'ble Bombay High Court directed the revenue authorities to enter the names of the third parties

in the 7/12 extract of the suit property. In view of the said findings, the third parties are co-sharers in the suit property. Consequently, the defendants had no right to execute an agreement to sell in respect of the entire suit property without the consent of the other co-sharers. Therefore, it was contended that the third parties are necessary parties to the present suit. On these grounds, the learned advocate prayed for allowing the application. In support of his contention, he has relied on SK. Golam Lalchand v. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes & Ors., Civil Appeal No.4177 of 2024 decided on 10.09.2024.

3. On the other hand, the learned advocate for the plaintiff submitted that the third parties are not parties to the disputed agreement to sell. It was contended that the plaintiff has not claimed any relief against the said third parties in the present suit. Therefore, according to the learned advocate, the third parties are neither necessary nor proper parties to the present suit. It was further submitted that the presence of the third parties is not required for the effective and complete adjudication of the dispute arising out of the agreement to sell. Hence, the learned advocate prayed for rejection of the application. In support of his contention he has relied on Rajubhai Kamdar @ Rajendra Kamdar v. Smt.Sunita W/o. Ashok Gandhi and anr., 2008(2) ALL MR 134 and Anil Kumar Singh v. Shivnath Mishra and Godasa Guru, 1995 SCC (3) 147.

4. On perusal of the record, it appears that the present suit has been instituted by the plaintiff against the defendants seeking specific performance of the agreement to sell dated 30.08.2023, allegedly executed by defendant Nos.1 to 4 in his favour. It further appears that in Second Appeal No.319 of 2012, the Hon'ble Bombay High Court has held that the third parties, namely Sujata Ramesh Aadulkar, Sujitkumar

Vilas Gadkari, and Vaishali Sanjay Chavan, are co-sharers in the suit property. In view of the said finding, it becomes necessary to examine whether the third parties, being co-sharers in the suit property, are necessary parties to the present suit for specific performance. Section 19 of the Specific Relief Act, 1963 clearly prescribes the persons against whom relief of specific performance may be claimed. Section 19 of the Specific Relief Act, 1963 confines the relief of specific performance to the parties to the contract and to persons claiming through or under them. A person who is neither a party to the contract nor claiming under a contracting party does not fall within the ambit of Section 19. Furthermore, the Hon'ble Supreme Court in **Anil Kumar Singh's** case (cited supra), it is held that-

8. The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party for effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the Court in suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

9. Sub-rule (2) of Rule 10 of Order 1 says that "necessary parties are persons who ought to have been joined as a party to the suit, a necessity to the constitution of the proper suit without whom no relief or order can be passed". In order that a person may be considered a necessary party, defendant to the suit, the conditions precedent must be (1) that there must be a right to some relief against him in respect of the dispute involved in the suit; and (2) that his presence should be necessary to enable the court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without her presence the dispute as to specific performance cannot be determined.

Therefore, she is not a necessary party.

5. Therefore, it is clear that the parties to the contract and persons claiming through or under them are the necessary parties in the suit for specific performance. A person does not become a necessary party merely because he has an interest in the suit. The Hon'ble Supreme Court has taken a similar view in the case of **Kasturi Vs. Iyyamperumal and Ors. (2005)6 SCC 733** wherein it is held that -

8. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.

In this case the Hon'ble Supreme Court has further held that -

As noted herein earlier, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos. 2 and 3 and whether contract was executed by the appellant and the respondent Nos. 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos. 2 and 3. It is an admitted position that the respondent Nos. 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on an independent title and possession of the contracted property. It is, therefore, obvious, as noted herein earlier that in the event, the respondent Nos. 1 and 4 to 11 are added or impleaded in

the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law.

6. In the present case, as discussed hereinabove, the third parties are asserting an independent title in respect of the suit property. In such circumstances, if the third parties are impleaded in the present suit, the scope of the suit for specific performance of the contract for sale would be enlarged into a suit for declaration of title, which is impermissible in law. A suit for specific performance is confined to the enforcement of the contractual obligations between the parties to the contract and cannot be converted into a title dispute. Therefore, it is evident that the presence of the third parties is not required for the effective and complete adjudication of the disputes involved in the present suit. Consequently, the third parties cannot be held to be necessary parties to the present suit.

7. Learned advocate for the third parties has relied on SK. Golam's case (cited supra). However, the facts of that case and of the present case are different. The said decision does not pertain to the addition of parties under Order I Rule 10 of the Code of Civil Procedure. Further, it has not been specifically held in the said judgment that a third person, who is not a party to the contract, is a necessary party in a suit for specific performance. Therefore, the ratio laid down in the said case is not helpful to the third parties.

8. In view of the above discussion, it is clear that the third parties are not necessary or proper parties in the present suit. Hence, the application is liable to be rejected. Hence, I pass the following order:-

**ORDER**

The application (Exh.21) is rejected.

**( P. A. Patil )**

Date: 02.02.2026.

Jt. Civil Judge Senior Division,  
Jaysingpur.