



Order below Exh.20 in
Reg. Civil Appeal No.146/2022
Babitai Moharly and Ors. ..V. Ashok Kamble and one
[Decided on 12.02.2026]

The present application has been preferred by the applicants seeking their impleadment as respondents in the present appeal under Order I Rule 10(2) of the Code of Civil Procedure, 1908.

2. The applicants contend that the appellants, namely Bebitai Laxman Moharle and others, have preferred the present appeal against the original respondent Ashok Kamble and another, challenging the judgment and decree passed in Special Civil Suit No. 78/2015 by the learned Civil Judge, Senior Division, Wardha. The said suit was instituted by Laxman Moharle for cancellation of a registered Power of Attorney dated 08.04.2015. During the pendency of the suit, Laxman Moharle expired, and his legal representatives were brought on record.

3. It is further averred that on the basis of the said registered Power of Attorney executed in favour of respondent Nos. 1 and 2, they entered into an Agreement of Sale dated 31.08.2017 with the present applicants on behalf of Laxman Moharle. However, as the validity and legality of the said Power of Attorney were under challenge in Special Civil Suit No. 78/2015, the sale deed could not be executed in favour of the applicants.

4. They further stated that after the demise of Laxman Moharle, his legal heirs declined to execute the sale deed in their

favour. Consequently, the applicants instituted Special Civil Suit No. 206/2022 for specific performance of contract against the present appellants as well as the respondents in the present appeal, which is presently pending before the 7th Joint Civil Judge, Senior Division, Wardha. It is their contention that since the present appeal pertains to the legality of the Power of Attorney dated 08.04.2015, and since their Agreement of Sale dated 31.08.2017 is founded upon the said Power of Attorney, their rights and interests are directly affected by the outcome of the present appeal. They submit that without their impleadment, the appeal cannot be effectively adjudicated and that denial of an opportunity of hearing would seriously prejudice their right to seek specific performance. In support of their contentions, they have produced copies of the Agreement of Sale, plaint in Special Civil Suit No. 206/2022, and the Written Statement therein. They have therefore prayed to be added as respondents and to be heard in the present appeal.

5. The appellants opposed the application by filing a detailed reply at Exhibit 21. They have denied that the Agreement of Sale dated 31.08.2017 was validly executed. It is their specific case that respondent Nos.1 and 2 had obtained the alleged Power of Attorney from Laxman Moharle without his knowledge and consent. Upon discovering the same, Laxman Moharle instituted Special Civil Suit No. 78/2015 seeking cancellation of the Power of Attorney.

6. It is contended that during the pendency of the said suit, respondent Nos. 1 and 2 purported to execute the Agreement of Sale in favour of the present applicants without the knowledge of Laxman Moharle or his legal representatives. It is further asserted that

Laxman Moharle neither had knowledge of the said Agreement nor received any consideration thereunder. According to the appellants, the applicants were aware of the pendency of the suit for cancellation of the Power of Attorney and yet chose not to intervene in the said proceedings. Only after disposal of the suit did they issue a legal notice seeking enforcement of the Agreement of Sale.

7. They further submit that respondent Nos.1 and 2 had no authority to execute any transaction during the pendency of the suit challenging the Power of Attorney. They contend that the applicants, having full knowledge of the pending litigation, deliberately abstained from participating in Special Civil Suit No. 78/2015 and are now attempting to cure lacunae in their own pending suit (Special Civil Suit No.206/2022) by seeking impleadment in the present appeal. According to the appellants, the Agreement of Sale is per-se illegal and unenforceable, and the applicants neither have locus standi nor qualify as necessary or proper parties to the appeal. Hence, they seek dismissal of the application with costs.

8. The points for determination and my findings thereon are as under :-

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the applicants are necessary or proper party to the appeal ?	..	No.
2.	Are the applicants entitled to be joined as the respondents ?	..	No
3.	What order ?	..	The application is rejected.

REASONS

AS TO POINTS NO.1 AND 2 :-

9. The matter on these points is common and interconnected. Therefore they are taken together for consideration.

10. The applicants claim rights as prospective purchasers under an Agreement of Sale dated 31.08.2017 allegedly executed by respondent Nos.1 and 2 on behalf of Laxman Moharle under the impugned Power of Attorney dated 08.04.2015. They have also instituted Special Civil Suit No.206/2022 seeking specific performance of the said Agreement. It is an admitted position that Laxman Moharle had instituted Special Civil Suit No.78/2015 on 18.06.2015 seeking cancellation of the Power of Attorney and permanent injunction. The said suit came to be dismissed on 31.03.2022 by the learned Joint Civil Judge, Senior Division, Wardha. During the pendency of that suit, Laxman Moharle expired and his legal heirs were brought on record. The present appeal is directed against the judgment and decree dated 31.03.2022.

11. The record indicates that the Agreement of Sale dated 31.08.2017 was executed during the pendency of Special Civil Suit No. 78/2015, wherein the validity of the Power of Attorney itself was under challenge. It further appears that the Agreement of Sale contains a specific clause acknowledging the pendency of the said suit and stipulating that execution of the sale deed would be subject to the outcome thereof. Thus, the applicants were admittedly aware of the pending litigation. Despite such knowledge, the applicants did

not seek to intervene or apply for impleadment in Special Civil Suit No. 78/2015 before the Trial Court. The present appeal arises out of that very suit. The scope of the appeal is confined to examining the correctness and legality of the judgment and decree passed therein.

12. Moreover, the Agreement of Sale dated 31.08.2017 itself specifically stipulates that the execution of the sale deed shall be subject to the outcome of Special Civil Suit No.78/2015. It is well settled that an appeal is a continuation of the original suit. When the applicants, despite being fully aware of the pendency of the said suit and having expressly made their agreement subject to its result, did not seek impleadment before the Trial Court, there is no justifiable ground at this appellate stage to permit their addition as respondents.

13. Under Order-I, Rule-10(2) of the Code of Civil Procedure, a party may be added only if it is found to be a necessary or proper party. A necessary party is one without whom no effective decree can be passed, while a proper party is one whose presence may be required for a complete and final decision of the questions involved in the proceedings.

14. In the present case, the controversy in the appeal pertains to the validity of the Power of Attorney and the correctness of the dismissal of Special Civil Suit No.78/2015. The applicants' presence is neither indispensable for adjudicating the validity of the impugned judgment nor necessary for granting effective relief in the appeal. The relief sought in the appeal can be completely and effectively adjudicated between the existing parties. As a sequel to the above

discussion, it is held that the applicants are neither necessary nor proper parties to the present appeal. Accordingly, points No.1 and 2 are answered in the negative.

AS TO POINT NO.3:-

15. In view of my findings to points No.1 and 2, the application deserves to be rejected and is accordingly rejected. In the circumstances, the parties to bear their own costs. In the result, in answer to point No.3, I pass the following order :-

ORDER

- 1] Application (Exh.20) is rejected.
- 2] Parties to bear their own costs.

Date : 12.02.2026

[H. B. Gaikwad]
Principal District Judge,
Wardha.