

**ORDER PASSED BELOW EXH.27.**

(CNR No.MHWS110007472025)

**Vimal Madanchand Deoda & Anr. Vs. Municipal Council,
Karanja**

Present application has been filed by applicant/intervener namely Mr. Shekhar Purushottam Kannav under Order 1 Rule 10 of the Code of Civil Procedure, 1908 thereby praying for adding him as a defendant No.2 in the array of defendants.

2] Perused application, say given by plaintiffs at **Exh.22** and documents filed on record by the respective parties. Also heard applicant/intervener in person and learned advocate appearing for plaintiffs.

3] Applicant/intervener in person has submitted that the plaintiffs have filed instant suit for declaration and permanent injunction against defendant i.e. Municipal Council, Karanja. It is further submitted that plaintiffs, in para Nos.8 and 9 of the plaint, have given reference in respect of disposed criminal proceeding i.e. Criminal Case No.54/2015 decided by J.M.F.C., Karanja Lad and also in respect of disposed Criminal Appeal No.393/2024 decided by the Hon'ble Bombay High Court, Bench at Nagpur by mentioning the name of applicant/intervener in the plaint.

4] Applicant/intervener in person has further submitted that he has made complaint to the Chief Officer, Municipal Council, Karanja Lad on 17/02/2014 in respect of unauthorized construction

made by the plaintiffs and only on the basis of said complaint, the defendant i.e. Municipal Council, Karanja Lad initiated action against the plaintiffs. Therefore, it is necessary to add applicant/intervener as party defendant No.2 in the array of defendant as he is necessary and proper party in the present suit and in his absence, present suit cannot be decided effectively and completely. Therefore, considering the nature of suit it is necessary to join applicant/intervener as a party defendant in the present suit. Hence, applicant/intervener has prayed for grant of this application.

5] On the contrary, learned advocate for plaintiffs has strongly opposed this application on the ground that present application came to be filed without any reasonable cause. It is further submitted that applicant/intervener is neither necessary party nor proper party in the present suit as the plaintiffs have not sought any relief against the applicant/intervener. The applicant/intervener has failed to explain as to why he is necessary or proper party to the present proceeding. It is further submitted that notice of demolition is given by the defendant i.e. Municipal Council, Karanja to the plaintiffs and the plaintiffs have challenged said notice by way of present suit. The plaintiffs being dominus litis, are having choice of adding party or of claiming relief against the party as per their choice. They can not be compelled to join any stranger as a party defendant in the present suit against their wish. Hence, learned advocate for plaintiffs has prayed for rejection of present application with costs being devoid of merits.

6] Having regard to the submissions of applicant/intervener in person and learned advocate appearing for plaintiffs and also considering the documents on record, it appears that the plaintiffs have sought reliefs only against defendant i.e. Municipal Council, Karanja Lad and they have sought no relief against applicant/intervener. Moreover, the applicant/intervener is neither necessary party nor proper party to the present proceeding for deciding the present suit effectively and completely. In absence of applicant/intervener, present suit can be decided on merits and any decree, if passed on merits in the present suit will not be prejudiced to the applicant/intervener in any way. If the applicant/intervener has any grievance against plaintiffs then he can file separate proceeding.

7] It would be appropriate here to refer the recent judgment of the Hon'ble Supreme Court in the case of **Nak Engineering Company Pvt. Ltd. Vs. Tarun Keshrichand Shah and Ors., decided on 05/01/2026 (Neutral Citation - 2026 INSC 8)** wherein the Hon'ble Supreme Court in para Nos.33 to 40 of its judgment has observed as under -

33. The fundamental distinction between a "necessary party" and a "proper party" was succinctly explained in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524**, wherein this Court held:

“6... A necessary party is one without whom no order can be made effectively. A 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 proceeding.”

34. In *Kasturi Vs. Iyyamperumal*, (2005) 6 SCC 733 this Court crystallized the twin tests for a necessary party:

“...the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. ... two tests are to be satisfied for determining the question as to who is a necessary party. The tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

35. This principle has been consistently reiterated. In *Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre & Hotels (P) Ltd.*, (2010) 7 SCC 417 this Court reiterated:

“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 dispute 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.”

36. Thereafter, in **Vidur Impex & Traders (P) Ltd. Vs. Tosh Apartments (P) Ltd., (2012) 8 SCC 384** the broad principles governing impleadment were summarized:

“41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be

made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.”

37. In the case at hand, the respondent Nos.1 and 2 are not claiming any relief against the appellant. There is no iota of material to indicate that the relief, as claimed in the suit against respondent No.3, if granted, would be implemented against the appellant. Therefore, the appellant is not a necessary party to the suit.

38. The appellant cannot also be construed as a proper party once it has failed to establish that it is a successor to the respondent No.3. In the absence of any evidence to prove that respondent No.3 has ceased to exist or cannot be represented in the suit on its own to contest it on merits, we are of the opinion that the appellant is not even a proper party to provide any assistance to the court in the suit.

39. This apart, the respondent Nos.1 and 2 who have instituted the suit are dominus litis and it is for them to choose their adversaries. If they do not array the proper and necessary parties to the suit, they do it at their own risk. However, they cannot be compelled to add a party to defend a suit against their wishes. The decree, if any, passed in the suit would be binding only between the parties to the suit and would not infringe upon any right of a third party, much less of the appellant that is not a party to the suit.

40. This conclusion is reinforced by the fundamental principle laid down in **Kanaklata Das Vs. Naba Kumar Das, (2018) 2 SCC 352** wherein this Court has observed:

“11.4. ...the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no 6 ptperson can compel the plaintiff to allow such person to 6 ptbecome the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.

11.5. ... a necessary party is one without whom, no order can be made effectively, a 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 proceeding.”

8] Therefore, considering the law laid down by the Hon’ble Supreme Court in aforesaid cases on the point of necessary and proper party to the proceedings, I think that it is not necessary to join

applicant/intervener as a party defendant in the present suit. Thus, I think it just and proper to reject the present application. Hence, following order is passed.

ORDER

- 1] Present application is rejected.
- 2] No order as to costs.

Date - 25/02/2026.

(S. W. Thombre)
Civil Judge, (Sr.Dn.),
Karanja (Lad).

CERTIFICATE

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Karanja.
- 3) Date :- 25/02/2026
- 4) Order signed by the
presiding officer on :- 25/02/2026
- 5) Order uploaded on :- 25/02/2026