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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.15430 OF 2022
IN
SUIT NO.273 OF 2021

Sudesh Gurudas Jotkar)
Age- 55, Occ. Service)
R/o. 11, Gurukrupa, Nav Kanjur Co-op.)
Hsg. Society, Damale Colony,)
Bhandup (E), Mumbai – 400 042.)
And)
60 Others)Applicants

In the matter between

Nitin Chandrakant Patel)
A senior citizen of India,)
aged 69 years, being the sole proprietor)
of M/s. Mahalaxmi Land Development)
residing at 501 & 502, Pran Ashish CHS)
Ltd. Seven Bungalow, Versova,)
Andheri (West), Mumbai – 400 061.)Plaintiff

Versus

1. Pariwar Co-operative Housing)
Society Limited, a society registered)
under the provisions of the Maharashtra)
Co-operative Societies Act, 1960, under)

Registration No. BOM/WS/HSB/(TO))
8668-2001 having its address at Nehru)
Nagar, P. Godbole Marg, Kanjur (East),)
Mumbai – 400 042)

2. Mr. Vasant Shinde,)
Chairman of Pariwar Co-operative)
Housing Society Limited, having its)
address at Nehru Nagar, P. Godbole Marg)
Kanjur (East), Mumbai – 400 042)

3. Mr. Jaywant Patil)
Secretary of Pariwar Co-operative)
Housing Society Limited, having its)
address at Nehru Nagar, P. Godbole Marg)
Kanjur (East), Mumbai – 400 042)

....Defendants

Mr S. S. Bedekar a/w Mr. M. Limaye for the applicants.
Mr. Rohaan Cama a/w Mr. Amod, Ms. Ayushi and Mr. Mohit
Goyal i/by Wadia Ghandy & Co. for the Plaintiff.
Mr. Vatsal Shah i/by Mr. Abhishek Patil for the defendants.

CORAM : Jitendra Jain, J.

Reserved on : 12 September 2025

Pronounced on : 16 September 2025

Judgment :-

1. This interim application has been filed by 61 applicants praying for a direction against the plaintiff to add them as defendants in the suit.

Brief Facts :-

2. In Suit No.273 of 2021, the prayers of the plaintiff is against defendant no.1- society for executing the conveyance and the possession of the plot of land admeasuring by 5412 sq. mtrs. bearing CTS No.1196-E situated at Village Kanjur, Taluka Kurla, Mumbai. The prayer in the main suit is based on an agreement dated 16 April 2003 executed between the plaintiff and defendant no.1- society (2003 agreement). The said agreement was *inter alia* with respect to the development of property reserved for District Centre bearing property CTS No .1196-B and 1196-E being Primary School Property. As per this agreement the plaintiff was to develop and construct 500 flats for defendant no.1 society and hand over the same. In addition to handing over of 500 flats the plaintiff was supposed to make some payment. Both these obligations have been discharged by the plaintiff. The applicants are not the parties to the 2003 agreement.

3. As per Clause 11 of the 2003 agreement between the plaintiff and defendant no.1, it was agreed that the plaintiff would be entitled to deal with and/or dispose of the plots *inter alia* Plot No.1196-E on paying the consideration as mentioned therein. There is no dispute that the payments specified in this clause have been made by the plaintiff to

defendant no.1. There is also no dispute that the plaintiff has handed over 500 flats as per the 2003 agreement to defendant no.1.

4. As per Clause 17 of the 2003 agreement, it was agreed between the plaintiff and defendant no.1 that the defendant no.1-society shall not claim over the two plots reserved for District Center and Private School (1196-B and 1196-E) and the plaintiff shall be entitled to deal with and/or dispose of the same after paying the consideration as mentioned in Clauses 1 and 11. There is no dispute that the consideration mentioned in Clauses 1 and 11 has been paid by the plaintiff.

5. The present applicants have pressed their prayer for intervention based on paragraph 8 to 13 of the application. Paragraph 8 records the litigation dispute with respect to the applicants not being made the members of the defendant no.1-society. The said dispute was subject matter of proceedings under the Co-operative Societies Act, 1961 and ultimately by order dated 1 September 2014, this Court in paragraph 4 observed that the right of the respondents therein (applicants herein) to take part in the management of the society is restricted to explore more avenues for dwellings.

Submissions of the Applicants :-

6. Mr. Bedekar, learned counsel for the applicants submits that the observation in paragraph 4 of the above order

permits them to take part in the management of the society which would include to explore avenues for dwellings. The said exploration can be done only on the Plot No.1196-E which is open and vacant today and therefore, the applicants are justified in making the present application under Order I Rule 10(2) of the Code of Civil Procedure, 1908. (CPC). He further submitted that the liberty given by paragraph 4 of the order dated 1 September 2014 would include their right in interfering in the 2003 agreement.

7. Mr. Bedekar, learned counsel for the applicants relied upon the decision in the case of *Kasturi Vs. Iyyamperumal & Ors.*¹ and prayed that the application be allowed and the plaintiff be directed to make the applicants as party-defendants. He also referred to first appeal being pending in this court against order passed in Suit No. 4939 of 2003 with regard to membership issue.

Submissions of the Plaintiff :-

8. Mr. Cama, learned counsel for the Plaintiff, opposing the intervention application, submitted that the applicants in paragraph 13 of the application have admitted that they are seeking intervention on the ground that they are members of defendant no.1-Society and they have annexed share certificates to the application. He submitted that based on this averment itself and relying upon the decision of the Division Bench of this Court in the case of *Girish Mulchand*

¹ (2005) 6 SCC 733

Mehta & Anr. Vs. Mahesh S. Mehta & Anr.², the applicants lose their identity once, they accept that they are members of the society. He relied upon paragraph 16 of this judgment and submitted that in such a case only society can agitate and not members of the society, who are not parties to the 2003 agreement.

9. He further submitted that the 1 September 2014 order on which heavy reliance is placed by the applicants is also of no assistance. He submitted that the applicants have not taken any steps in terms of paragraph 4 of the said order for last more than 10 years. He further submitted that there is no challenge in any proceedings before any forum to the 2003 agreement on the basis of which the present suit is filed by the plaintiff and in which the applicants are seeking to intervene. He disputed reading of paragraph 4 of the order as sought to be canvassed by the applicants.

10. He also submitted that some of the applicants in this application, in other proceedings before other forums, have not challenged the entitlement of the plaintiff to Plot No.1196-E.

11. Mr. Cama, learned counsel relied on paragraphs 16 to 18 of the decision of the Supreme Court in the case of ***Kasturi*** (supra) and submitted, in alternative, that the applicants are

² 2010 (2) Mh.L.J. 657

strangers to these proceedings and therefore, are not entitled to be impleaded in the present suit.

12. Mr. Cama, learned counsel further submitted that if at all, the applicants have any grievance against the defendant no.1-society, then the remedy lies somewhere else and not by intervening in these proceedings.

Submissions of Defendant No.1 :

13. Mr. Shah, learned counsel for defendant No.1-Society opposed the present application. Mr. Shah, learned counsel further submitted that the defendant no.1-society consists of 485 members and the present applicants are 61 members and the total aggregates to around more than 546 members. He submitted that the 2003 agreement was executed by passing a resolution by majority members of defendant no.1 and assuming at that point of time, the present applicants were to be considered as members and assuming they had opposed, still the resolution for executing the agreement with the plaintiff could have been passed by a majority and once the society passes a resolution and the agreement is executed, the dissenting members would have no say.

Analysis & Conclusion :

14. I have heard learned counsel for the applicants, original plaintiff and the original defendant no.1. Other than what is

recorded by me, no other arguments have been advanced by the parties and other than what is shown to me, no other documents have been referred to by the parties.

15. The short question which arises for my consideration is whether the application to implead applicants as defendants in the main suit should be allowed on the basis of Order I Rule 10(2) of the Code of Civil Procedure, 1908 which reads as under :-

Order I - Parties to Suits -

10. Suit in the name of wrong plaintiff-

(1)

(2) Court may strike out or add parties- 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 the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and 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.

16. As per the parameters laid down by Order I Rule 10(2), the Court has to decide whether the present applicants should be joined as defendants in the suit and whether they are necessary in order to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. Therefore, one has to see the prayers sought for in the main suit.

17. The prayers in the main suit seek a declaration that the 2003 agreement is valid, subsisting and binding on defendant no.1. It further seeks prayer against defendant no.1 to execute conveyance with respect to plot of land admeasuring 5412 sq. mtrs. bearing CTS no.1196-E and to hand over the possession of the said plot of land.

18. 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.

19. The 2003 agreement is executed between the plaintiff and defendant no.1-society on 16 April 2003. There is no challenge to the 2003 agreement by anybody before any forum till date. The said agreement was executed between

plaintiff and defendant no.1-society and even today before me, the defendant no.1-society has not contested the said agreement. Therefore as things stand today, 2003 agreement holds the field in which the present applicants are neither the parties nor any relief prayed for in suit cannot be adjudicated in their absence in the present suit.

20. There is no dispute that the plaintiff has handed over 500 flats to defendant no.1-society as required under the 2003 agreement. There is also no dispute that the plaintiff has made all the payments as required under this agreement on the basis of which the plaintiff is claiming conveyance and possession of plot no.1196-E. Therefore, the conveyance and the possession has to be handed over by the defendant no.1-society. Nothing is shown to me as to how the applicants can claim any locus in the performance of 2003 agreement.

21. In my view, for adjudicating the prayers sought for in the main suit, the only parties required are the plaintiff and defendant no.1 and no other party. Therefore, the presence of the applicants is not necessary for adjudicating the prayers sought for in the main suit.

22. The applicants in paragraph 13 of the application have stated that they being members of defendant no.1-society have rights over the suit plot and therefore, they are necessary parties. In my view, without examining whether the

applicants are members or not, but accepting the said statement, the applicants lose their identity based on this very statement.

23. Mr. Cama is justified in placing reliance on the decision of the Division Bench of this Court in the case of ***Girish Mulchand Mehta*** (supra) and more particularly on paragraph 16 wherein this Court has held that once a person becomes a member of a Co-operative Society, he loses his individuality with the society and he has no independent rights except those given to him by the statute and by-laws. The Court further observed that the member has to speak through the society or rather the society alone can act and speak for him qua the rights and duties of the society as a body. The applicants have not shown to me their independent rights given by the statute or by-laws for the purpose of the present intervention. Therefore, based on the admission of the applicants themselves that they are members of the defendant no.1- society and on applying the ratio of the decision in the case of ***Girish Mulchand Mehta*** (supra), in my view, the present applicants cannot assert their independent rights for intervention in the main suit.

24. It is not disputed that land is owned by defendant no. 1 and not by individual members of the society. If the Individual members of the society are permitted to intervene then the separate legal existence of the society will become redundant and would lead to chaotic situation.

25. It is important to note as averred in paragraphs 8 to 12 of the application that the issue of membership of some of the applicants is a subject matter of the dispute before other forums in which no relief was granted and I was informed that there is an appeal being First Appeal (Stamp) No. 34351 of 2024 dismissing Suit No.4939 of 2003 pending before the learned Single Judge of this Court. The said appeal is only admitted without there being any interim relief till today and that too by only some of the applicants and even in that suit there is no challenge to 2003 agreement but only to membership rights. There is no prayer in Suit No. 4939 of 2003 with regard to plot of land bearing CTS No. 1196-E.

26. In my view, even assuming that some of the applicants succeed in the appeal, then also they would not be a necessary party in the present suit. Firstly the 2003 agreement is between the plaintiff and defendant no. 1 and these applicants are not parties to the 2003 agreement. Furthermore, (assuming the 61 applicants are treated as 'members') there would be 546 members of defendant no.1 and assuming these 61 members are treated as dissenting members, still dissenting members would constitute only 11% and that would not have entitled them in blocking the resolution which was passed and on that basis the said agreement was executed. Therefore even on this count, the applicants' presence in the present suit cannot be treated as necessary for adjudication of the prayers sought in the main

suit, moreso when there is no challenge to the 2003 agreement till today.

27. There is no semblance of right demonstrated by the applicant in the prayer sought for by the plaintiff to make them party defendants in the present suit. The frame of the suit would completely change if impleadment is allowed since it would amount to adjudication of dispute between the applicants and defendant no.-1 society in a suit filed by plaintiff for specific performance of agreement between plaintiff and defendant no.-1. The applicants are strangers to the present suit.

28. The real dispute appears to be between the applicants and defendant no.1 society and the present proceedings are initiated to deprive the entitlement of the plaintiff under the 2003 agreement. If at all, the applicants have any grievance against the functioning or decision making of defendant no.1-society, then the remedy would lie somewhere else and not by way of intervention in the present suit. Therefore even on this count, in my view, the parameters laid down by Order I Rule 10(2) of the CPC are not satisfied. However, the applicants are entitled to take appropriate proceedings in accordance with law against defendant no.1 society if at all they have any grievance but *inter se* dispute between them cannot be agitated indirectly by making the present intervention application in the suit filed for specific performance of

agreement between the plaintiff and defendant no. 1.

29. Heavy reliance was placed by the learned counsel for the applicants on the order of this Court dated 1 September 2014 and more particularly on paragraph 4 for pressing the present application. Paragraph 4 cannot be read in isolation. In paragraph 1 of the said order, the Court records that the respondents therein (applicants herein) have challenged the allotment of 485 flats constructed by the defendant no.1-society herein. Paragraph 4 does not give any right to the present applicants for opposing the relief sought for by the plaintiff against defendant no.1-society pursuant to 2003 agreement in the present suit. Paragraph 4 only entitles the applicants to take part in the management of the society with respect to exploring more avenues for dwellings. Therefore, this does not affect the entitlement of the plaintiff under the 2003 agreement. Paragraph 4 is only between the applicants and defendant no.1-society and same cannot be read to mean that they are necessary party for adjudication of prayers sought for in the present suit in which the intervention application is filed.

30. The order dated 1st September 2014 cannot be read to mean that applicants have been permitted to claim their rights under the 2003 agreement which was already concluded on the date of the order. It would only mean the right of participation in future and not in respect of the

concluded agreement, of which specific performance is sought now.

31. In my view, the decision of the Supreme Court in the case of *Kasturi* (supra) supports the submissions made by learned counsel for the plaintiff with all the force for contending that present application is required to be dismissed as the applicants do not satisfy the requirements required and stipulated by Order 1 Rule 10(2) of CPC for impleadment as defendant.

32. Mr. Bedekar sought to contend that facts of the present case should be treated as an exception to the law laid down in *Girish Mulchand Mehta* (supra) and therefore, same should not be applied. I am afraid to accept this submission. Firstly, no such exception is carved out by the decision of *Girish Mulchand Mehta* (supra) and secondly, for the reasons stated above no such exception can be made.

33. For all the above reasons, (cumulatively and/or independently) in my view, the present applicants before me are not necessary parties for adjudicating of the prayers sought for in the main suit nor do I feel that it is just and proper for them to be impleaded as defendants. I have not been shown any right of the applicants in the 2003 agreement which makes them a necessary or a proper party for adjudication of the relief sought in the main suit but on the

contrary reliefs sought for in the present suit can be adjudicated even in their absence.

34. In my view, the presence of the applicants is not necessary to enable the court to effectually and completely adjudicate and decide the reliefs sought for in the suit.

35. Therefore, for all the above reasons, the Interim Application (L) No.15430 of 2022 in Suit No.273 of 2021 is dismissed.

36. Before I conclude, I may observe that the reasonings and findings given herein by me are only for the purpose of deciding the present interim application and same should not be construed as my findings with regard to any proceedings which are not before me. I accord my appreciation to all the counsel in assisting the Court in disposing of the present intervention application.

(Jitendra Jain, J)