

Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1227 OF 2015**

1. Savita Arun Zambre
Age 43 Yrs, Occ : Household,
R/o. Manjari Farm, Zhambare vasti,
Tal. Haveli, Dist. Pune.
2. Ms. Sadhana Walmiki Gole
Age 36 Yrs, Occ :Household,
R/o. Manjari Farm, More Vasti,
Tal. Haveli, Dist. Pune.
3. Babita Sunil Harpale
Age 40 Yrs, Occ : Household,
R/o. Manjari Farm, More Vasti,
Tal. Haveli, Dist. Pune.
4. Master Abhinav Sunil Harpale
Age 14 Yrs Minor, Occ : Education,
Minor through his natural guardian
mother petitioner no.3.
R/o. Manjari Farm, More Vasti,
Tal. Haveli, Dist. Pune.

...Petitioners

(Org. Defendants)

VERSUS

1. Manjari Projects Private Limited
A company registered under the
provisions of Indian Companies

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Act, 1965 having its office at
Krishnadeep Manjri Farm Solapur
Road, Pune 411007.

2. Maland Projects (I) Pvt. Ltd.

A company registered under
the provisions of Indian Companies
Act, 1913, Kumar Capital, East Street,
Camp, Pune 411001

...Respondents

(Respondent No.1- Org. Plaintiff)

(Respondent No.2 – Third party applicant)

Mr. Drupad Patil a/w. Ms. Srushti Chalke for the petitioners.

Mr. Rohan Savant a/w. Mr. Vinayak Chitale i/b. Parinam Law
Associates for the respondents.

CORAM : GAURI GODSE, J.

RESERVED ON: 7th MAY 2026

PRONOUNCED ON: 20th AUGUST 2026

JUDGMENT:

1. This writ petition is filed by the original defendants to challenge the order dated 15th March 2014 passed below Exhibit 137, thereby allowing the application filed by the third party to be added as co-plaintiff no. 2. Respondent no. 1 is the original plaintiff and respondent no.2 is the third party who is permitted to be added as a co-plaintiff.

2. Respondent no.1 has filed the suit for specific performance of the agreement dated 15th December 2006 and the supplementary agreement dated 22nd August 2007 executed by the petitioners in favour of respondent no.1, i.e. the original plaintiff. The suit also challenges the notice dated 17th April 2009 terminating both the agreements. In this suit, the petitioners filed an application at Exhibit '130' for amendment to the written statement to bring on record the assignment in favour of the third party. The said application was filed after the petitioners learnt that the plaintiff had already assigned its rights to a third party before filing the suit. The original plaintiff had filed an application at Exhibit '133' for leave to amend the plaint to add the third party as the party plaintiff and amend the plaint for seeking specific performance also in favour of the third party.

3. The plaintiff's application at Exhibit '133', the defendants' (petitioners') application at Exhibit '130' and the third-party application at Exhibit 137 were decided by separate orders on the same day. The learned judge recorded reasons for deciding all the applications in the Order below Exhibit '133'. The rejection of the plaintiff's

application at Exhibit '133' and the order allowing the defendants' application at Exhibit '130' are not challenged. Since the third-party application is allowed, the defendants have filed this writ petition.

4. Learned counsel for the petitioners submitted that the application of the third party under Order I Rule 10 of the Civil Procedure Code, 1908 ("CPC") is on the ground that the original plaintiff's rights are assigned to the third party. However, the deed of assignment is prior to the filing of the suit. He submitted that the registered development agreement and the power of attorney executed by petitioner no.1 in favour of the plaintiff are dated 15th December 2006. The original plaintiff executed the registered deed of assignment dated 27th July 2007, thereby assigning its rights to the third party, i.e. respondent no. 2. This deed of assignment was executed without any intimation to the defendants; thus, unknown about the deed of assignment, the supplementary agreement was executed by the defendants in favour of the original plaintiff, by which a certain amount towards the consideration was agreed to be paid to the defendants. Due to non-compliance with the

obligations under the agreements, the defendants terminated the development agreement and the power of attorney by issuing a notice dated 17th April 2009. The original plaintiff immediately filed suit challenging the termination notice and seeking specific performance and, in the alternative, compensation.

5. Learned counsel for the petitioners submitted that in the written statement, the petitioners raised a specific contention that the plaintiff was not entitled to maintain the suit, as it is already divested of its right in view of the deed of assignment executed in favour of the third party. The trial court had allowed the application for temporary injunction on 20th April 2010, granting an injunction against the petitioners. The order was carried over in this court, and the parties were directed to maintain the status quo. Learned counsel for the petitioners, therefore, submits that only to prolong the suit and defeat the rights pleaded by the defendants for termination of the agreement, the third party is sought to be included in the suit. He submits that if the third party has independent rights under the deed of assignment, a separate suit can always be filed. However, to avoid the limitation bar,

the backdoor method is adopted to implead the third-party assignee as a co-plaintiff.

6. Learned counsel for the petitioners submits that the assignee during the pendency of the suit can be added as a party on the ground of assignment in view of Order XXII Rule 10 of the CPC. However, the third-party application is filed under Order I Rule 10 of the CPC on the ground that it is a necessary and proper party. He submits that the grounds to add a party are only based on the deed of assignment. Since the deed of assignment is prior to the date of filing of the suit, the same cannot be a ground to add the party by taking recourse to Order I Rule 10 of the CPC.

7. Learned counsel for the petitioners submits that the trial court has completely ignored that the deed of assignment executed prior to the date of filing of the suit cannot be a valid ground for seeking impleadment under Order I Rule 10 of the CPC. Learned counsel for the petitioners, therefore, submits that the impugned order warrants interference by this Court. To support his submissions, learned counsel for the petitioners relied upon the decision of the Apex Court in *Life Insurance Corporation*

of India Vs. Sanjeev Builders Private Limited and Anr¹. In the said decision, the plaintiff had objected to the impleadment of the third party as a plaintiff. The Apex Court held that in a suit for specific performance, an application for impleadment has to be filed within a reasonable time. Learned counsel for the petitioners submitted that the Apex Court has summarised the legal principles on the question of impleadment of a party in a suit for specific performance. The Apex Court held that a necessary party is a person who ought to be joined as a party to the suit, in whose absence the suit cannot be decided. It is further held that the proper party would be a person whose presence would enable the court to completely, effectively, and properly adjudicate upon all the matters in issue. The issue regarding enabling provisions under Order XXII Rule 10 of the CPC concerns the continuance of the suit on the ground of assignment, creation, or devolution *pendente lite*. Hence, the third party would not be entitled to be added as a party on the ground of a deed of assignment executed prior to the filing of the suit.

8. Learned counsel for the petitioners submitted that in

¹ (2022) 16 SCC 1

the present case, the third party has prayed for impleadment on the ground of a deed of assignment executed before filing of the suit. The suit is to challenge the termination of the development agreement in favour of the original plaintiff. If the defendants succeed and the termination is upheld, the deed of assignment executed pursuant to the terminated development agreement would not confer any right on the third party. Hence, to defeat the rights and contentions of the defendants in the suit that was filed after the deed of assignment in favour of the third party, the present application is filed. In view of the delay in deciding the suit, the defendants are suffering hardships due to the interim protection directing the parties to maintain the status quo.

9. Learned counsel for the respondents supported the impugned order. He submits that the apprehension expressed by the plaintiff would ultimately pertain to the bar of limitation. By the impugned order, the plaintiff's application for amendment of the plaint is rejected, and only impleadment of the third party is allowed. Hence, there is no prejudice to the defendants. The bar of limitation is kept open by the trial court. Hence, no prejudice is caused to the

defendants in view of the impugned order. To support his submissions, learned counsel for the respondents relied upon the decision of the Apex Court in ***Robin Ramjibhai Patel Vs. Anandibai Rama Alias Rajaram Pawar and Ors***² and ***Life Insurance Corporation of India***. He submitted that the subsequent transferee can be added as the party, with the plaintiff, who is *dominus litis*, having no objection. In the present case, the plaintiff has no objection to the third party being added as a co-plaintiff. Hence, in view of the well-settled legal principles, no prejudice would be caused to the defendants if the third party is added as a co-plaintiff.

10. Learned counsel for the respondents also relied upon the decision of the Apex Court in ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Ors***³. He submits that the Apex Court has carved out the legal principles governing impleadment of a party as plaintiff. He submits that in view of the rights assigned in favour of the third party, it would be entitled to proceed with the suit to challenge the termination of the original agreement. Learned counsel for the

² (2018) 15 SCC 614

³ (2010) 7 SCC 417

respondents also relied upon the decision of this court in *State Trading Corporation of India Ltd -In the matter of- Standard Chartered Bank Vs. ICICI Lombard General Insurance Company Ltd*⁴. He submits that this court has taken a view that a party who claims through the plaintiff has a right to enforce his rights and can be joined as co-plaintiff.

11. I have carefully perused all the papers. There is no dispute that the third party's deed of assignment is prior to the filing of the suit. The defendants allege that the third party is a sister concern of the original plaintiff. Hence, according to the defendants, only to defeat the rights created in favour of the defendants, an application for impleadment is filed by the third party. It is pertinent to note that, in the trial court, the third party had appeared through a separate advocate. However, in the present writ petition, both the parties are represented through the same advocate. This supports the petitioners' contentions that the third party, being a sister concern of the original plaintiff, has applied for impleadment to defeat the rights created in favour of the defendants.

12. The defendants filed an application at Exhibit 130 on

4 2015 SCC OnLine Bom 6272

19th November 2013. Thereafter, on 29th November 2013, the plaintiff filed a reply to Exhibit 130 and also the application at Exhibit 133. Thereafter, on 15th January 2014, the third party filed the application at Exhibit 137 under Order I Rule 10 of the Code of Civil Procedure. In reply to the said application, the defendants contended that, as the assignment was prior in time, the plaintiff had already divested its rights in favour of the third party. Hence, the suit would not be maintainable. The reasons in the impugned order pertain to the right of a party to be added in view of the assignment of rights during the pendency of the suit.

13. The trial court has not addressed the scope of Order I Rule 10 for adding the third party as a co-plaintiff, when the deed of assignment in favour of the third party is admittedly prior to the date of filing of the suit. In the terms and conditions of the development agreement in favour of the original plaintiff, there is a provision to assign the rights to a third party. The plaintiff, by exercising the said right, has divested itself of all the rights by transferring the rights under the development agreement and the power of attorney in favour of the third party. It is not even the case of the plaintiff

that such assignment was intimated to the defendants, who are the original owners. Hence, in a suit challenging the termination of the agreement and the power of attorney, the defendants raised an objection that the plaintiff would not be entitled to any relief, as it had divested its rights in favour of the third party. Thus, there would not be any question of deciding the claim of the third party by relying upon the provision of Order XXII Rule 10 of the CPC. So far as Order I Rule 10 is concerned, the scope to add a third party as co-plaintiff must satisfy the requirements as contemplated under Order I Rule 10 of the CPC, which reads as under :-

“10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

*(4) **Where defendant added, plaint to be amended.**—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant*

(5) Subject to the provisions of the 1 [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

14. Order I of Rule 10 grants power to the court to add a

party as plaintiff when it is found that the suit is instituted in the name of the wrong person through a *bona fide* mistake and that, to determine the real matter of the dispute, it is necessary to substitute or add the name of the plaintiff. In the present case, no such *bona fide* mistake has been pleaded for adding a third party as a co-plaintiff. Sub-rule (2) of Rule 10 of Order I empowers the court to strike out or add a party. The said sub-rule provides that a party can be added if it appears to the court to be just and proper to add a party for a factual and complete adjudication upon and settlement of all the questions involved in the suit. Thus, the assignment in favour of the third party cannot be a ground to add the party as a co-plaintiff by relying upon Order I Rule 10, as the assignment is prior to the date of filing of the suit.

15. Contingencies regarding the assignment of rights *pendente lite* are covered under Order XXII Rule 10 of the CPC. However, such a contingency did not arise in the present case. Hence, the only consideration is whether the prayer to add the third party as a co-plaintiff falls within the scope and reasons provided under Order I Rule 10 of the CPC.

16. In the Apex Court's decision in *Robin Patel* relied upon by the learned counsel for the respondents, there were rival claims against the same vendor. In the present case, the said principles would not apply as the third party is claiming through the plaintiff in whose favour there was a development agreement. In *Life Insurance Corporation of India*, the consideration was pertaining to a claim for specific performance. Hence, it was held that the impleadment can be allowed for the proper adjudication of the dispute when the rights have been assigned during the pendency of the suit. In *Mumbai International Airport Private Limited*, an assignee was added as co-plaintiff in view of Order XXII Rule 10 of the CPC. The Apex Court held that if the court found that the addition of the party would alter the nature of the suit or create a new cause of action, it may be dismissed. Even if it is found to be a proper party, it may be dismissed if it does not wish to broaden the scope of specific performance in the suit. It is further held that the court may otherwise direct such applicant (third party) to be impleaded as a party either unconditionally or subject to the terms.

17. In the present case, the impleadment would defeat the

defendants' rights, as they contend that, in view of the plaintiff's rights being divested in favour of the third party, the suit would not be maintainable. Hence, in view of the aforesaid legal principles, the third party's claim to be added as co-plaintiff would not fall within the scope of Order I, Rule 10 of the CPC. The decision of this court in ***State Trading Corporation of India Ltd.*** dealt with an assignment by way of consent terms signed before the Debt Recovery Tribunal ("DRT") during the pendency of the suit. Hence, the conclusion recorded in the said decision would not apply in the present case where, admittedly, the deed of assignment in favour of the third party is prior to the filing of the suit. Hence, at most, the third party may be entitled to file its own suit, and it cannot be permitted to be added as a co-plaintiff, which would prejudice the rights created in favour of the defendants.

18. In view of the divesting of the rights by the original plaintiff before filing the suit, the defendants are entitled to oppose the grant of the relief claimed in the suit. It is pertinent to note that the plaintiff's application to amend the plaint to seek relief of specific performance in favour of the

third party is dismissed by the trial court. The trial court held that the plaintiff has not given any satisfactory explanation regarding concealing the fact of assignment in favour of the third party. The trial judge further held that the third party had purchased the litigation and therefore had stepped into the shoes of the plaintiff. Hence, the third party is deemed a necessary party. This reason is erroneous, inasmuch as the plaintiff had already assigned its right before filing the suit; hence, there is no question of purchasing the litigation or stepping into the shoes of the plaintiff.

19. Thus, it is clear that the application by the third party is filed only to defeat the defence. The defendants are entitled to oppose the prayer seeking cancellation of the termination of the development agreement and the prayer for specific performance on the ground that the assignment would divest the plaintiff of its rights. Thus, in view of the serious prejudice that would be caused to the defendants, the impugned order allowing the impleadment as the co-plaintiff without recording any valid reasons would warrant interference.

20. Hence, the Writ Petition is allowed by passing the

following order:

- a) The order dated 15th March 2014 passed below Exhibit 137 in Special Civil Suit No. 1463 of 2009 is quashed and set aside. The application at Exhibit 137 is dismissed.
- b) This order will not preclude respondent no. 2 from filing a separate suit, subject to all just objections by the proposed defendants.

[GAURI GODSE, J.]