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**(1984) 06 BOM CK 0030**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 46 of 1984

Jaiprakash Shankarrao Pisal

APPELLANT

Vs

Vilas Ganpat Dongre and Others

RESPONDENT

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**Date of Decision :** 21-06-1984

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10  
Specific Relief Act, 1963 — Section 19

**Citation :** (1985) 1 BomCR 657

**Hon'ble Judges :** Sharad Manohar, J

**Bench :** Single Bench

**Advocate :** A.V. Anturkar, for the Appellant; R.T. Walawalkar and Narendra V. Walawalkar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sharad Manohar, J.—This revision application arises out of an order passed by the learned Civil Judge, (Senior Division), Satara rejecting the application of the present petitioner to be joined as a party-defendant to the suit filed by present respondent Nos. 1 and 2 (hereinafter the plaintiffs) against the remaining respondents for specific performance of an agreement of sale allegedly executed by respondent No. 3 (hereinafter defendant No. 1) in favour of the plaintiffs.

I am of the view that not only that the learned Judge was not justified in rejecting the petitioner's application for being joined as a party defendant to the suit, but in these days when the courts must find as many ways and means as possible for curtailing the prolixity of litigations, in fact the Court itself should have required the plaintiffs to implead the present petitioner and also his brother Vijaysingh as party-defendant to the suit so as to effectuate complete adjudication of all the questions involved in the suit. To my mind the application made by the present petitioner was in fact in the interest of the plaintiffs themselves and they should have in fact welcome the application and should have themselves invoked the Court to implead them as parties; but

astonishingly, not only in the lower Court but also before me the application was most strenuously opposed on behalf of the plaintiff. In normal circumstances I would not have given an elaborate judgment in such a case, because in a number of similar matters I had the occasion to pass an order directing a person, such as the petitioner, to be impleaded in the suit. But since the petitioner's application was opposed most stoutly before me and since I am required to discuss the case-law on this point as well as the first principles relating to the same, I am giving an elaborate judgment after mentioning all the relevant facts pertaining to the litigation.

2. For the sake of convenience the parties will be referred to with respect to their positions in the trial Court as plaintiffs, defendant, etc. The suit property consists of three plots of land at Wai, District Satara. According to the plaintiff, the property belongs to Shankar-defendant No. 1 Defendant No. 2 is his daughter. According to the plaintiffs by an agreement dated 7-9-1981 defendant No. 1 agreed to sell the suit properties to the plaintiffs for the total price of Rs. 40,000/-. A sum of Rs. 2,500/-, was allegedly paid by the plaintiffs in cash and possession of the suit properties (as mentioned in para 1 of the plaint) was allegedly delivered to the plaintiffs by defendant No. 1 as and by way of part performance. According to the plaintiffs, defendant No. 2 signed the said agreement as a consenting party. Further, according to the plaintiffs, the sale was to be executed within one year and three months upon receipt of the balance of the amount. The plaintiffs contend that they are ready and willing to pay the balance of the amount, but that the defendants are trying to back out from the agreement. Further it is alleged in paragraph 6 of the plaint that the properties come to be transferred to defendant No. 8. Some allegation of conspiracy is made in paragraph 6 but it is not mentioned as to who transferred the property to defendant No. 3 and what kind of conspiracy existed, amongst the various defendants. I tried to verify the correct pleadings by examining the plaint which is in Marathi; but the confusion existing in the original Marathi version is co-extensive with the confusion reflected in its English translation, copy of which is included in the paper book filed in this Court.

The significance of this airy nature of the averments in the plaint may have to be considered by the trial Court.

The grievance of the plaintiffs in the remaining paras of the plaints is that they called upon all the four defendants to execute the sale-deed in their favour and since the defendants refused to oblige, they were required to file the suit for specific performance against all of them. In the plaint it is mentioned that the plaintiffs were already in possession and prayer is made that the plaintiffs possession may be confirmed, whatever it may mean.

3. All the four defendants have filed a common written statement, Exh. 29. In the first place, they denied the execution of a valid agreement dated 7-9-1981 in favour of the plaintiffs. It is specifically alleged in para 6 of the said written statement that the said agreement dated 7-9-1981 was taken by the plaintiffs

from defendant No. 1 by cheating him while he was drunk. It is denied that any consideration was paid towards the said agreement. Moreover, it is specifically stated in the said written statement that defendant No. 1 was getting attacks of lunacy and was in fact in the hospital at Yerawada at some previous times. It is stated that he has not fully recovered from the attack of lunacy and that he gets attacks of lunacy even today. It is mentioned in paragraph 8 of the written statement that during one of such attacks, while defendant No. 1 was under the influence of drink, the plaintiffs got the alleged agreement of sale executed from him and hence the agreement was void and illegal.

4. But what is most important for the purpose of the present petition is the averment made in para 6 of the written statement. In paragraph 6 it is stated that so far as the suit property at Serial Nos. 1-A and 1-B were concerned, they were already sold by defendant No. 1 to defendant No. 4 even before the date of the agreement. Further it is stated that so far as the suit property at Serial No. 1-C was concerned, it was not separate self-acquired property of defendant No. 1 but that it is ancestral property in his hand. It is further mentioned that defendant No. 1 has two sons Vijaysingh and Jaipalsingh who are residing in Gwalior Madhya Pradesh and that they have shares in the suit property at Serial No. 1-C. It is specifically mentioned in said para 6 that defendant No. 1 has only 1/3rd share in the suit property at serial No. 1-C and since there is no partition between defendant No. 1 and his two sons, the said two sons Vijaysingh and Jaipalsingh are necessary parties to this suit and that in their absence the suit is liable to be dismissed. It is specifically mentioned in the said para that defendant No. 1's two sons had consented to the sale of the property at Serial Nos. 1-A and 1-B on 13-2-1978 and suggested that was how the two properties at Serial Nos. 1-A and 1-B came to have been transferred even before the date of the agreement.

5. The defendants have not remained content by setting up a plan of the ancestral character of the suit property. One of the sons of defendant No. 1, Jaipalsingh whose name is wrongly typed as Jaiprakash in this petition, in fact filed an application Exh. 32 under Order 1, Rule 10 of the CPC for being impleaded as a party-defendant in the suit. He contended in the said application that the suit properties have been the ancestral properties of defendant No. 1 and his two sons. He pointed out that apart from the plan of fraud which is being raised against the plaintiffs, all these defendants have pointed out to the Court that the suit properties are ancestral properties in the hand of defendant No. 1 in which properties his two sons Jaipalsingh and Vijaysingh have their own equal shares. It is mentioned that their rights are to be affected by the decision in the suit and hence they are necessary parties to the suit. It is further pointed out that if they are not added as parties to the suit they would be forced to bring a separate suit for declaration of their and in that case there shall be multiplicity of litigation.

As will be presently pointed out, any right thinking person trying to enforce his

bona fide claim in the suit would readily agree to, may, would in fact welcome this application. The contention of Jaipalsingh (who is petitioner before me) is unanswerable at least to the extent that even if the suit is decreed in the favour of the present plaintiff the execution of the same is bound to be delayed ad infinites because the petitioner will be entitled to obstruct the execution of the decree for the asking and in that event there was bound to follow a second inning of the litigation. Entire evidence will have to be led by the parties all over again. How such a procedure would be beneficial to the plaintiffs is a mystery. No doubt, the position would be extremely happy for the lawyers' community; but for the litigating public it shall be mere waste of time, money and energy.

The fact, however, remains that the plaintiffs were advised to oppose this application and I am not at all happy about the fact the learned Judge was persuaded to accept the protestation of the plaintiffs and the application made by the present petitioner for being impleaded in the suit was rejected by the learned Judge.

It is against this order that the present petition is filed by the petitioner in this Court.

6. Even in this Court the present petition and the original application were opposed in the stoutest possible manner so much so that an inescapable impression was stamped on the mind of the Court that according to the plaintiffs their suit was immeasurable jeopardised by virtue of the threatened presence of the petitioner as a party-defendant in the suit. All kinds of argument have been advanced as last bastions of defence. It is argued that there exists a difference of opinion between two learned Single Judge of this Court and that, hence, it is incumbent upon me to refer this case to a Division Bench. I find each and every argument to be untenable.

7. The petitioner's contention is plain and simple. The petitioner points out that the defendants' contention in the suit, namely that the suit property is ancestral property in his hand, has to be adjudicated upon in the suit and for that purpose an issue is bound to be raised by the Court. Now the issue as to whether the suit property is ancestral property or not is an issue in which not only defendant No. 1 but his two sons are virtually interested. It is futile to contend that in the absence of the sons of defendant No. 1 an effective decree can ever be passed in favour of the plaintiffs even assuming that every word stated by them in the plaint is accepted as gospel truth. This would be particularly so when the question of the ancestral character of the suit property is specifically in this suit, decision on which would be an exercise in futility in the absence of the sons of the alleged vendor. Even if, therefore, the position was that this country and our society could reveal in multiplicity of litigation and even assuming that such suits could be disposed of by the Court expeditiously and without delay, still the provisions of Order 1, Rule 10 of the CPC veritably enjoined the Court to see to it that the litigation is not multiplied. It is true that the provision of Order 1, Rule 10 of the Code are enabling provisions. Under the said provisions power is given

to the Court to implead certain persons as party-defendants with a view to effectuate final adjudication of the dispute. The power can be exercised not only upon application of any of the parties or of third parties but ever suo motu. The discretion with which the Court is invested has got to be exercised judicially and the exercise of the discretion has got to be based upon some principles. The Court cannot say that the plaintiff does not want particular party and, therefore, the Court will not implead that party. If a particular party can legitimately point out that in his absence there cannot be effective adjudication of the dispute pending before the Court and that his presence is going to effectuate such disposed then the Court is duty bound to implead that person as a party. One thread that runs through the entire gamut of the CPC is the disparagement of arbitrariness. It is true that a plaintiff should not be made to fight with unnecessary persons as defendants who have no direct interest in the dispute before the Court; but at the same time it is not open for the plaintiff to tell the Court that he is going to fight the litigation by instalments. To my mind this is what the plaintiff is wanting to do in the Instant case or at least he has been advised to do so for the reasons best known to him or to his advisers.

8. The law in this behalf really speaking is quite well settled since at least the last 40 years. The judgement of Wassoodew, J., in the case of Shivshankareppa Mahadevappa Parakanhatti Vs. Shivappa Parappa Kupati, , has stood the test of time for all these years. This is what the Court has held in the judgement :

"No doubt in a suit for specific performance the general rule is that a stranger to the contract cannot be sued upon it. Only the parties to the contract are necessary and sufficient parties. But the general rule is subject to certain modifications. For instance strangers are made parties as an exception to the rule in cases of Novatio; in cases of an interest arising under prior contract; and in cases where it is desirable to avoid multiplicity of suit as contemplated by Order 1, Rule 1. In a suit for specific performance of contract of sale of certain land persons who claim the property adversely to the vendor and who are in possession of the property and whose possession is likely to defeat the claim of the plaintiff to possession may be joined as defendants. So also a person who claims to have attached the land before judgement in a suit against the vendor and claims the attachment should be upheld and is binding on the plaintiff, is also a necessary party."

On principle, the above authority has not been answered by the learned Counsel for the plaintiffs at all. It is not disputed that a decree, if any, passed in favour of the plaintiffs in the present suit would be of no avail for them because they are bound to face the suit or similar legal proceeding from the petitioner and his brother for a declaration that defendant that the decree is not binding upon them and for a declaration that defendant No. 1 had no authority to sell the share of the petitioner and his brother in the suit property. If in such a suit the petitioner and his brother prove that the suit property laws ancestral property in the hands of the defendant, the present plaintiffs shall have no answer because in the

present suit the plaintiffs have not stated that the suit property was sold by defendant No. 1 to them for any legal necessary or for the benefit of the estate or for payment of any antecedent debt. The agreement of sale set up by them does not mention the existence of any such condition.

The remedy of specific performance is an equitable remedy and it is elementary knowledge that equity, like nature, does nothing in vain. The Court are not meant for playing the role of agents of merry-making litigants to satisfy their urge for indulging in speculative litigation.

9. This was the position at all the times in the past; but this is all the more so in the present days when courts have become breathless by virtue of overburdening files of litigations under which they are almost about to crack. In those days in fact the courts have to find out legitimate Short-cuts (of course strictly within the four corners of law) to curtail the litigations and to expedite the resolution of the disputes. Any practice by virtue of which resolution of the disputes is going to be protracted has got to be firmly put down.

The learned Counsel for the plaintiff "s had no quarrel with this proposition; but still he maintained that this was not the law laid down by this Court and some other courts. In facts, he contended that the position of law as laid down by this Court and some other courts was exactly opposite, I must, therefore, examine the position of the case-law.

10. The sheet-anchor of Mr.. Walavalkar in support of this contention was the judgment of a learned Single Judge of this Court in the case of E. Ajay Kumar Vs. Tulsabai and Another, . this was the case upon which the entire argument was based; hence I will deal with this authority at some length.

In the said case the plaintiff filed a suit for specific performance of the agreement of sale of agricultural lands, entered into by defendant with him. The plaintiff was allegedly put in possession upon payment of part of the consideration. The plaintiff wanted the sale-deed to be executed in his favour by the defendant and when the defendant denied the existence of a valid agreement he filed a suit for specific performance of the said agreement. In that suit an application was filed by a stranger-applicant, one Nandlal, for being impleaded as a part defendant in the suit; but all that he alleged in the said application was that he had some interest in the property and that the defendant as such was incompetent to enter into any agreement of sale of the salt lands in favour of the plaintiff. In spite of this application the plaintiff chose not to implead the said Nandlal as a part defendant in the suit and he opposed the application under Order 1, Rule 10 of the Code. The application was granted by the trial Court. In revision this Court took view that the said Nandlal was not a necessary party to the suit. On that ground this Court set aside the order passed by the trial Court and rejected the application of Nandlal. However, even while rejecting the application of such stranger, the principle of law as laid down by the learned Single Judge is not in any way different from the one which is referred to by me

about. This is what the learned Judge states in para 8 of the said judgment :

"The power of the Court to add parties in such matters is referable to Order 1, Rule 10, CPC Sub-rule (2) empowers the Court either upon or without application to direct parties to be joined who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The provisions which are ex-facie enabling clearly indicates the conditions for exercise of that power. It is only when the Court comes to the conclusion that for the purpose of full adjudication of the matters in issue or to settle the controversies, a party which is not added is necessary, the provision of sub-rule (2) are attracted. It is plain that unless the party proposed to be added has directly or indirectly an interest in the controversy or its adjudication, the power cannot be invoked".

In the present case before me it is impossible to hold that the present petitioner has no interest, direct or indirect, in the controversy which is the subject matter of the suit. What is significant about the facts in the case of E. Ajay Kumar is that the interest of Nandlal was only vaguely pleaded. The Court does not seem to have been informed as to what was the nature of his interest in the suit property. It was no doubt Nandlal's case that by virtue of his interest in the suit property Tulsabai, the defendant in that suit, had no power to enter into the agreement of sale with the plaintiff in that suit. But that was the only protestation of the said stranger. No material was placed before the Court in that case that the ultimate decree that was likely to be passed in favour of the plaintiff in that suit could be of no avail to him in view of the interest that Nandlal had in the suit property or that the execution of the decree would be successfully resisted by Nandlal merely because he was not impleaded in the suit. In other words, in what manner Nandlal was a necessary party to the suit, in what manner without his presence a final and effective decree could not be passed in favour of the plaintiff in that suit, were the facts about which the Court either had no occasion to deal with or had, for some reason or the other, found it unnecessary to deal with. If this is the position, then the said judgment of the Single Judge is no authority for the proposition that in a suit for specific performance of the agreement a person who claims to have interest in the suit property is not necessary party to the suit.

11. But the apart, what is significant to note about the said judgment in E. Ajay Kumar's case is that the attention of this Court was invited only to the question as to whether the stranger applicant was a necessary party or not. My attention was not invited to any part of the judgment in which the question as to whether the stranger applicant was a proper party or not is discussed. It is well-known that persons are made parties to the suit not only because they are necessary parties; there are certain persons against whom relief is claimed in the suit and there are, again those against whom no relief as such is claimed and all the same they are necessary parties. We will call these two categories of the parties as categories A and B. But there is a third category of parties, category C,

against whom no relief is claimed and they are not even necessary parties; but all the same their presence in the suit results in various benefits to all the parties in the suit particularly in effectively adjudicating the entire dispute that has reached the precincts of the Court. Such persons are proper parties and the jurisdiction that is conferred upon the Court under Order 1, Rule 10 of the Code is not reached restricted only to necessary parties mentioned as categories A and B above. The Court's jurisdiction can extend to implied even proper parties who fall in category C above. In E. Ajay Kumar's case this Court's attention does not appear to have been invited to the question whether Nandlal was a proper party or not. I am firmly of the view that if the present petitioner is not necessary party in the instant case, he is, at least, very much of a proper party in the suit by virtue of whose presence in the suit the entire dispute is likely to be resolved once for all and without whose presence the dispute is bound to be protracted to innings after innings of litigation.

12. The next authority relied upon by Mr. Walavalkar was the judgment of the Madhya Pradesh High Court reported in *Panne Khushali and Another Vs. Jeewanlal Mathoo Khatik and Another*, . In that case a suit was filed by the plaintiff for specific performance of an agreement of sale of suit property entered into by the defendant. In that suit some strangers made an application under Order 1, Rule 10 for being impleaded as party defendants contending that the defendant in the suit had no title to the suit property. In short, the stranger applicants set up a title to the suit property adversely both to the plaintiff and the defendant in the suit. It was in this context that the Full Bench of the Madhya Pradesh High Court held that they were neither necessary parties nor proper parties to the suit.

For coming to this conclusion reliance was placed by the learned Judge of the Madhya Pradesh High Court upon section 19 of the Specific Relief Act. The said section 19 provides that specific performance of an agreement may be enforced against various persons and a list of persons is mentioned in the said section. The Madhya Pradesh High Court has taken the view that the list of persons mentioned in the said section 19 is exhaustive. With great respect, I find it somewhat difficult to accept this proposition of law in the sense in which it is referred to in the judgment. In para 10 of the said judgment the Full Bench has observed as follows :---

"The applicants are not claiming under the non-applicant No. 2. On the contrary, their claim is adverse to the title of the non-applicant No. 2 and thus, these applicants do not fall in any of the categories enumerated in the force-quoted section. This section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced. If these applicants are added as parties to the suit, it would tantamount to the conversion of the suit, into a title suit, deciding the title inter se as the non-applicant No. 2 and the applicants."

The question as to whether a suit for specific performance could be allowed to be

converted into a suit for title or not is a different question; but if the other proposition is that in a suit for specific performance no person other than those mentioned in section 19 can be impleaded, with respect, such a proposition will have to be closely examined. As it well known, the courts of equity do not and cannot indulge in futile litigation. That is the reason why the courts of equity have always had a face set against passing a decree which is going to be an exercise in futility. The English courts of equity always cherished the maxim that equity like nature, does nothing in vain. If the Court can see the stark reality that the decree that is to be passed in favour of the plaintiff is going to be rendered a futility, the courts of equity will be chary in the matter of giving to him the equitable relief of specific performance. To hold that section 19 of the Specific Relief Act is exhaustive is to hold that the said section 19 overrides the provisions of Order 1, Rule 10 of the Code. With great respect I find no justification for such a view. I do not see any reason why the Court's jurisdiction to see to it that a dispute is effectively adjudicated upon should be constricted by virtue of the provisions of section 19 of the Specific Relief Act which aims at giving equitable jurisdiction to the Court.

13. I may, however, mention that so far as the ultimate decision of the Full Bench is concerned, there can be no quarrel with the same. What is held by the Madhya Pradesh High Court is that a suit for specific performance is not a suit on title and that a person claiming title adverse to both the parties need not be and ought not to be impleaded in the suit so as to expand the scope of the suit. In the case before me the petitioner is not claiming any title adverse to defendant No. 1. His only contention is that he has a much share in the suit property as defendant No. 1. This claim is basically different from the claim made by the non-applicant in the case with which the "Madhya Pradesh High Court was dealing.

14. I may also refer to the discussion made by the Madhya Pradesh High Court on the questions to whether such a stranger applicant was a proper party to the suit. The said discussion is contained in para 13 of the said judgement. This is that the Court has observed in that behalf :

"Thus, the question of proper parties has also to be decided, bearing in mind the scope of the suit. The question involved in the suit is the enforceability on the contract entered into between the parties. If these applicants are introduced as party in the suit the scope of the suit as already observed hereinabove would be enlarged and it would be turned into a suit for title. For effectually and completely adjudicating upon the rights between the non-applicants Nos. 1 and 2 based on the contract the presence of these applicants is not all necessary. We cannot be oblivious of the legal position also that the judgement in the suit would be inter parties and not a judgement in term and as such, it would be operative only between the parties. Therefore, the expression "all the question involved in the suit" can very well be said to mean the questions as between the parties to the litigation. The scope of the suit cannot be widened. The judgement in this suit is not going to effect the title of the applicants, if any. The plaintiff is the

dominus let us and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law and, as already discussed hereinabove, these applicants are not necessary parties and as such, the plaintiff cannot be forced upon to join them as parties. The argument that to avoid the multiplicity of the suit, it would be proper to join these applicants as parties, though attractive, but with no substance. Merely on this ground, a party which does not fall within the scope of the aforesaid expression which governs the question of determining as to who is a proper party cannot be joined as proper party. If this taken as the only test, in any litigation, no party can be termed as an "improper party" even if its addition in effect is to compel the plaintiff to enlarge or change the nature of this suit."

With great respect, it may not be possible to accept the position of law laid down so widely by the learned Judges. While it is true that the plaintiff should not be compelled to face resistance of all the persons in the world to vindicate his claim in the suit and while it is true that merely because some person comes to the Court and expresses his desire to context the plaintiffs' claim he should not be allowed to be impleaded in the suit, at the same time, the board manner in which the position is discussed by the Court gives rise to this position that according to the Madhya Pradesh High Court there exists no difference between necessary parties and "proper parties". This is clear from that fact that in the said observation the Court has held that the applicants were not necessary parties and such the plaintiff cannot be forced upon to join them as parties. I am afraid no guidance can be received from the abovementioned discussion on the question as to whether a person claiming interest in the property which is subject matter of the suit filed by the plaintiff is a proper party or not and whether as such he should be impleaded or not.

15. That apart, even assuming that the reasoning of the Madhya Pradesh High Court while coming to the conclusion, that the applicants in that case were not entitled to be impleaded as parties to the suit, is correct the nature of interest claimed by the applicants in that case and by the petitioner in the present case are basically different. In the case before the Madhya Pradesh High Court, the title was claimed by the applicant adversely both to the plaintiff and the defendant. In the present case the petitioner in fact sets up the same claim as the defendants. He is not claiming title to the suit by virtue adversely to the parties, defendants at all. He is in fact supporting the defendants. The decree, if passed in favour of the plaintiff in the absence of the petitioner, cannot be effective even against the defendants because it is bound to be obstructed by the defendant No. 1's son, namely the petitioner. The passing of decree, if any. In favour of the plaintiffs would, therefore, be nothing more than the expression of a place of wishful thinking in the plaintiff's favour. It is difficult to see what justification could be detected in an equity Court's indulgence in such mere wishful thinking.

16. I may mention here that vigorous arguments were advanced on behalf of the

plaintiffs before me not with a view to support the judgment of the lower Court, but merely with a view to refer this petition to a Larger Bench. The contention was that the view that is being taken by me is diametrically opposed to the view taken by my brother Judge in E. Ajay Kumar Vs. Tulsabai and Another, and further that the view is at variance with or diametrically opposed to the view taken by the Madhya Pradesh High Court. In support of this proposition strong reliance was placed upon the judgment of the Supreme Court in Lala Shri Bhagwan v. Ram Chand, AIR 1966 S.C. 1767 , where it was held that if one learned Single Judge of the High Court is inclined to differ from the view taken by earlier Division Bench or by a Single Judge of the High Court he should refer the matter to the larger Bench or should place papers before Chief Justice to enable him to constitute a Larger Bench. There can be no quarrel with this proposition whatsoever, but the point in the instant case is that there exists the judgment of a learned Single Judge of this very Court which has stood the test of time so far so this State is concerned, viz. judgment of Justice Wassoodew referred to above. The judgment directly applies to the facts of the present case. On the other hand, the view taken by Justice Masodkar in E. Ajay Kumar Vs. Tulsabai and Another, , is distinguishable on the facts of the case. In these circumstances, there does not arise any question of conflict between the present judgment and the judgment of Masodkar, J.

17. In this view of the matter. It is unnecessary for me to refer to the other authorities referred to by Mr. Walavalkar to show that the petitioner is not a necessary party to the instant suit. I also do not purpose to refer to other authorities which go a long way to show that the present petitioner is very much a proper party in the present suit. Some of the authorities had been cited before the lower Court but the learned Judge has found them to be not applicable to the facts of the present case. I do not agree with the learned Judge on that point; but it is unnecessary for me to multiply the citations of authorities.

However, I may mention have certain facts to which my attention was invited by Mr. Anturkar, the learned Advocate for the petitioner. He pointed out that according to the plaintiffs, the petitioner who is defendant No. 1's son was not a necessary party; but surprisingly enough he has made defendant No. 2 who is none other than the daughter of defendant No. 1 a party to the suit. I asked Mr. Walavalkar by what process or reasoning she was impleaded as a party to the suit. Mr. Walavalkar contended that she was made a party because she was in possession of the suit property. It turns out that it was nothing but an early statement. Nowhere in the plaints is it stated that defendant No. 2 was impleaded because she was in possession of the suit property. Admittedly, defendant No. 1 was in possession of the entire property which was not in possession of defendants Nos. 3 and 4. Defendant No. 2 is only the daughter of defendant No. 1. She cannot be said to be in possession of the suit property at all. Defendant No. 2 is also staying in the suit property. All the same she has been impleaded in the suit. The reason for her being so impleaded is not that she was in possession of the property; the reason was that she was a consenting

party to the alleged agreement of sale. It defies undertaking as to why the plaintiffs took the consent of the daughter but not of the sons to the agreement of sale. There appears to be a great deal of force in the contention that such gimmicks on the part of the plaintiffs gives rise to a legitimate basis for the plea that the alleged transaction is of Machiavellian type.

However, I do not wish to express my opinion on this question at all Mr. Anturkar is entitled to put forth these contentions before the trial Court and when raised, the trial Court shall consider them on their own merits. Nothing in this judgment shall be deemed to imply any expression of this Court's opinion on that point.

18. In the result, the petition is allowed. The rule earlier issued is made absolute. I am firmly of the view that the application made by the petitioner should not have been resisted at all and the advice received by the plaintiffs in this behalf is against the plaintiffs own interest unless the plaintiffs belong to the category of litigation mongering species of persons in the present society, whose interest lies in multiplying the litigation and getting some benefit for themselves just by the multiplication of the litigation. Unless the plaintiffs belong to that category of species. I fail to see how the plaintiffs are going to be benefited by opposing the application. In this view of the matter I would have directed the plaintiffs to pay exemplary costs of the petition. However, in view of the fact that certain arguable questions arise by virtue of the judgement of the Full Bench of the Madhya Pradesh High Court, I am of the opinion that the order as to costs which I was inclined to pass should be passed not in their case but in some other proper case. The respondents shall, however, pay normal costs of this petition to the petitioner.