

(2015) 01 BOM CK 0048

In the Bombay High Court

Case No : Chamber Summons (LODG.) No. 1237 of 2014 in Suit No. 1754 of 2006

Maooli Land Developers and Others

APPELLANT

Vs

Taukir Ahmed Mohammed Hanif Khan and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 23 Rule 1, Order 23 Rule 1A, Order 23 Rule 1A

Citation : (2015) 01 BOM CK 0048

Hon'ble Judges : K.R. Shriram, J.

Bench : Single Bench

Advocate : G.S. Godbole and Shailendra Kanetkar, for the Appellant; Rushabh Sheth a/w. Anaya Parchure instructed by Bodhanwala and Co., Advocates for the Respondent

Judgement

K.R. Shriram, J.—The plaintiffs have filed this suit for a declaration that the plaintiffs are the owners and are in possession of the suit property and also for declaration that the agreement for sale executed on 23rd January 1983 by one Devubai Thakur in favour of one Taukirahmed Mohammed Hanif Khan, i.e., defendant no. 1 is null and void and not binding upon the plaintiffs. The plaintiffs also seek a declaration that the agreement dated 22nd January 1988 executed by defendant no. 1 in favour of one Govind K. Bardricha, i.e., defendant no. 5 is null and void and not binding upon the plaintiffs. The plaintiffs are also challenging an order passed by the Additional Commissioner, Konkan Division on 17th July 2004.

The subject matter of the suit is a property admeasuring 6168.08 sq. yards or thereabout situated at Dahisar, Borivali Taluka, Mumbai Suburban District (for brevity as "the suit property").

2. All the plaintiffs had executed a development agreement and an irrevocable general power of attorney both dated 3rd September 2005 and both registered

on 11th November 2005 whereby the applicants claim to have been put in possession of the suit property. As per the power of attorney, the applicant nos. 2 and 3 and one more person by name Keshavrao B. More were also authorized to file legal proceedings for and on behalf of the plaintiffs. Pursuant to the said power of attorney, applicant nos. 2 and 3 with the said More had signed and verified the present suit for and on behalf of the plaintiffs. The applicant nos. 2 and 3 conducted the proceedings in this suit including appointment of advocates. The rest of details in the plaint are necessary for deciding this application.

3. The plaintiffs allegedly revoked the power of attorney of the applicants. The applicants' earlier advocate received a letter from one Advocate Ashok Mishra (present advocate for the plaintiffs) requesting for the earlier advocate to give NOC. On the letterhead the name of Advocate Riddhi Shah was also mentioned. The said Advocate Ms. Riddhi Shah had also issued a public notice on 25th April 2013 on behalf of undisclosed clients stating that they were interested in acquiring the said property and inviting objections. The then Advocate appearing for the plaintiffs had raised an objection. Since it was the same advocate whose name appeared in the letter of Advocate Ashok Mishra seeking NOC, the applicant nos. 2 and 3 apprehend that there was some conspiracy or collusion going on between the plaintiffs and some third party to deprive the applicants of their rights. It is for this reason, this chamber summons is taken out on behalf of the applicants to be impleaded as party defendants.

The applicant no. 1 is a partnership firm and applicant nos. 2 and 3 are partners of applicant no. 1. The applicants apprehend that if the applicants are not joined in the suit it is possible the plaintiffs may simply withdraw or abandon the suit one fine day or may enter into compromise with the defendants or may give up the title or obtain a consent decree with the defendants whereby the plaintiffs' rights will get prejudiced. The applicants state that the applicants would be affected by any order/decision that would be rendered against the plaintiffs as it will ultimately affect the right, title and interest of the applicants in the said property and in view of the agreements executed in favour of the applicants and an irrevocable power of attorney issued in favour of applicants, there is an enforceable legal right in favour of the applicants and hence the applicants are necessary parties.

4. The counsel for the applicants made extensive submissions under Order 23, Rule 1, Rule 1A, Rule 3 read with Order 43 of the Code of Civil Procedure, 1908 (CPC). The submissions were as under:-

i) Order 23 Rule 1 enables the plaintiff to withdraw and/or abandon whole or part of the suit. Under Rule 1A of Order 23, when the plaintiff abandons and/or withdraws the suit, any defendant can apply for transposing itself as plaintiff and to continue the suit. The Court has to consider such an Application and decide the same. In the present case, if the plaintiff applies for simpliciter unconditional withdrawal, at that time the applicants can apply to the Court for its transposition and to continue the suit as against the other defendants;

ii) Under Order 23 Rule 3 parties can enter into compromise for whole or part of the suit. If the parties enter into an agreement or compromise in writing, the Court has mandate to satisfy itself about lawfulness of the agreement and then record the same and pass a decree.

iii) Code of Civil Procedure was amended in 1976 vide Amending Act 104 of 1976. Prior to amendment, an Order passed under Rule 3 recording or refusing to record compromise was made Appealable under Order 43 Rule 1(m) and 1(o). By the Amendment Act 104 of 1975, the said remedy of Appeal from Order was deleted and proviso was added to Rule 3 putting a mandate on the Court, which passed consent decree, to decide the question, whether the agreement or compromise was lawful.

Rule 1(A) was inserted in Order 43 which gave right to a party to challenge an Order, against which, an Appeal is not available in the Appeal against final decree and point out that such Order could not have been passed. Rule 3(A) was inserted in Order 23, which bar a suit to set aside a decree on the ground that compromise was not lawful.

Thus, if the applicant is not added as party and the Consent decree is passed, in view of the provision of section 96, the applicants will have to first obtain leave of the Court to file an Appeal and/or institute a fresh suit to challenge the said Consent decree. This would only increase or lead to multiplicity of proceedings instead of putting an end to the litigation.

If the applicant is impleaded in the suit, the applicants will be in a position to point out that the Agreement is not lawful and that will save time of the Court. Further the applicants would be in a position to point out fraud/fraudulent acts and, therefore, not lawful, as contemplated by Order.

iv) The Hon'ble Supreme Court of India in the Judgment in the case of Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, , lays down that the compromise decree is open to challenge on the ground that the agreement was not lawful and also holds that if the agreement is fraudulent will also be included in the term the agreement not lawful.

v) The Judgment in the case of Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid and Others, lays down that a Development Agreement coupled with interest in the property creates a right and enforceable right, the Agreement in the present case is the Development Agreement coupled with interest and it creates rights in favour of the applicants. In view of this, the applicants are necessary parties and need to be joined.

5. The plaintiffs strongly opposed the chamber summons. The plaintiffs submitted that the applicants are not in possession of the suit property and the possession is still with the plaintiffs. In fact, that is what the plaint also states. It is also submitted that what the plaintiffs had entered into with the applicants was an Agreement for Sale and that does not create any interest in the suit property.

It was also submitted that transposition of the defendants as plaintiffs can only be done in suits like for example partnership suits for dissolution and rendering of accounts or a suit for partition or administration suit or by some of the co-owners against trespassers for recovery of property. In other words, only in suits where the defendants claim to be transposed have interest identical with the interest of the plaintiffs can transposition be considered. It was also submitted that the applicants have accepted the ownership and title of the plaintiffs in the suit property. The applicants have also filed an independent suit bearing no. 342 of 2014 against the plaintiffs for specific performance of the agreements under which the applicants were claiming through the present plaintiffs. The result in the present suit will not affect in any manner the rights of the applicants since the suit is simpliciter for a declaration that the plaintiffs are the owners of the suit property and an alleged transaction entered into between defendant no. 1 and defendant no. 5 is void and not binding upon the plaintiffs in the present suit. The plaintiffs also relied upon the following judgments:

- (a) Jethiben Vs. Maniben and Another,
- (b) Vyankatesh Dhonddey Deshpande Vs. Sou, Kusm Dattatraya Kulkarni and Others,
- (c) Chhedilal Podar and Anr. Vs. Rameshwari Singh and Ors. 2001 AIHC 1135
- (d) Evangelical Church of India Vs. North India Outreach Society,
- (e) J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another,

6. The plaintiffs also submitted that even if the applicants were joined as defendants to the suit, and at any stage, if the applicants applied to be transposed as party plaintiffs, the Courts would not permit such transposition just to give a chance to the applicants to avoid filing a suit. Therefore, the submissions of the counsel for the applicants under Order 23, Order 43 and Section 96 of the CPC are all irrelevant and the Courts should only look to the provisions of Order I, Rule 10, Sub-rule 2 of the CPC as to whether the applicants' application should be allowed or not?

7. As regards Venkatesh Dhondey Deshpande (supra) relied on behalf of the plaintiffs, it was submitted on behalf of the applicants that it does not apply to the facts of the present case, as the issue involved was with regard to validity of auction sale of the suit land which belonged to joint family of the Respondents and in that dispute the State Government was held to be not a necessary party. The State Government had no right much-less any enforceable right in that case, as the State Government had only conducted auction and hence it was not a necessary party.

As regards Chhedilal Podar (supra) relied on behalf of the plaintiffs, it was submitted on behalf of the applicants that in view of the Judgment of the Hon"ble Apex Court in Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, , which states that, even if

an agreement is enforceable under the law will not entitle a party to be joined as party will not hold any good, as the Hon''ble Apex Court clearly laid down that, if enforceable right is created, such party becomes necessary party.

As regards Jethiben Vs. Maniben (supra) relied on behalf of the plaintiffs, it was submitted on behalf of the applicants that under Order 23 Rule 1A, the Judgment would apply to the facts of the case, as the applicants have present right and not right in future in their favour in respect of the suit property. Hence, the applicants would be entitled to ask for transposition.

Further identity of cause of action or identity of interest has to be considered qua the defendants in the suit, and that there is some dispute between the plaintiffs and the applicants, would not be considered, while considering the identity of cause of action. Thus, as regards defendant No. 5, both the applicants and the plaintiffs have common interest and are ad idem that, it is only the plaintiffs who are having title over the suit property. Thus, there is identity of interest.

8. On the submissions of the counsel for the applicants under provisions of Order 23, Rule 1, 1A, 3 and Order 43 of CPC for the defendants to be transposed as plaintiffs, in my view, the interest to sue has to be identical to that of the plaintiffs. He must have a cause of action similar to that of the plaintiffs. To have a cause of action even similar to the plaintiffs, he must have a cause of action himself which I find lacking. In the matter of Jethiben Vs. Maniben (supra), the Court held that "to be transposed as a plaintiff, the defendant who claims to be transposed must have interest identical with the interest of the plaintiff. There are cases where plaintiff filed a suit who has interest in common to the person whom he makes pro forma defendant. In collusion with the contesting defendant, such a plaintiff may sometime decide to withdraw the suit. In order not to defeat the claim of pro forma defendant who has an identical interest with the plaintiff by such a withdrawal, provision of Order 23, Rule 1-A of the Code is made so that pro forma defendant or the defendant can be transposed as a plaintiff and the suit as filed by the plaintiff can be effectively proceeded against the defendant who has remained on the record as defendant. This is what the spirit of Order 23, Rule 1-A of the Code shows, because in such cases, the applicant (defendant applying to be transposed as plaintiff) has a substantial question to be decided as against any of the remaining defendants.

9. Though Courts lean against multiplicity of suits and, therefore, this provision of transposition is made only to avoid another suit. Courts would not, however, permit such transposition just to give a chance to a litigant to avoid filing a suit or permit him to take advantage of the suit filed by his adversary against him claiming a relief against him by becoming a plaintiff and trying to bring out the averments and relief's which are contrary to those claimed by the original plaintiff.

10. It is true that the provision of Order 23, Rule 1-A is new, but would that change the character and requirement of transposition? It merely permits that if

the plaintiff withdraws the suit, the defendant can request the Court to transpose him as plaintiff if the substantial question has to be decided against the remaining defendant. But that is circumscribed by the position under Order 1, Rule 10 of the Code, meaning thereby, under what circumstances transposition can be permitted. This provision is added, as stated earlier, in order to facilitate a pro forma defendant who has identical interest from being denied his right if he rested on the success of the plaintiff's suit and the plaintiff wanted to withdraw the suit. So, in that case if such a defendant is transposed as plaintiff, he can effectively get adjudication of his right. Courts even without this provision have considered as to what would be the position, when a plaintiff attempts to withdraw the suit on the rights of all other pro forma plaintiffs or pro forma defendants or defendants who have a cause of action identical to that of the plaintiff. In order to make a clear provision, this provision was added, though it was also considered on the same lines earlier irrespective of this provision. So, the normal consideration for transposition, that interest of the person to be transposed as plaintiff must be identical to the interest of the plaintiff who tries to withdraw, would not go away.

11. The Code of Civil Procedure under Order I, Rule 10(2) provides as under:

Order I, Rule 10(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.

This power to strike out and or add party to the suit can be exercised either on an application or suo-moto and at any stage of the proceedings. It is also settled law that if a party is necessary, the Court must add such a party to the suit if a party is found to be a proper party. The Court can add such party so that his presence would assist in adjudicating the issues involved. The Apex Court in the matter of Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, has laid down broad principles which should govern disposal of an application for impleadment. They are as under:

41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

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.

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.

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.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

12. The Apex Court in the matter of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, observed as under:

30. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 which empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 reads as under:

From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.

32. Considering the aforesaid provisions, this Court in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, held as under:

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions

involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck and Sons Ltd.* (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England* (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

The test is May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.

Therefore, what is required to be seen is adding the applicants as the defendants to the suit is necessary for the Court to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit or not.

13. The counsel for the applicants also submitted that the applicants had expended substantial amount of money in developing the property and has already paid money to the plaintiffs. In the matter of *Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Ors.* (supra), the Apex Court, even though the appellant therein claimed to have done lot of work and development, still, held that the appellant was not necessary party. Paragraphs 6, 7 and 27 of the judgment read as under:

6. According to the appellant the said parcel measuring 31,000 sq. m. was also part of the airport that was to be handed over by AAI to appellant but it could not be included in view of a pending case (Suit No. 6846 of 1999 on the file of the Bombay High Court) filed by the first respondent wherein the High Court had made an interim order dated 2.5.2001, relevant portion of which is extracted below:

The Defendant Airport Authority should also separately demarcate an area of 31000 sq. meters for which the plaintiff is making a claim in this suit. After the land is so demarcated, a copy of the plan would be handed over to the Plaintiff through their advocate. The learned Counsel further states that the land admeasuring 31000 sq. meters, which would be separately demarcated will not be alienated, sold and transferred and no third party interest in that land would

be created by the Defendants Airport Authority without seeking leave of this Court. He further states that the Defendant No. 1 would use the 31,000 sq. meters of land only for its own purpose as far as possible without raising any permanent construction on that land, and if it becomes necessary for the Defendant No. 1 to raise any permanent construction on that land, the work of construction would not be started without giving two weeks notice to the Plaintiff, after the building plan is finally sanctioned by the Planning Authority.

(emphasis supplied)

7. In pursuance of the lease of the airport in its favour, the appellant claims to have undertaken several developmental activities to make it a world class airport. The appellant alleges that it was expecting that the litigation initiated by the first respondent would end and it would be able to get the said 31,000 sq. m. land also as it was in dire need of land for developing the airport. According to the appellant, the Mumbai airport is surrounded by developed (constructed) areas with very limited opportunities to acquire any land and the site constraints limit the possibilities for development and therefore it was necessary to make optimum use of the existing land in the airport for the purpose of modernisation and upgradation; and therefore, the disputed land which was lying idle, was required for modernisation. It therefore filed an application seeking impleadment as an additional defendant in the pending suit filed by the first respondent against AAI, contending that its interest was likely to be directly affected if any relief is granted to the first respondent-plaintiff in the suit.

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27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. First respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title, in the property in dispute.

The Apex Court even in the said judgment dealt with Order I, Rule 10(2) of the CPC in paragraph 14 and 15.

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the

court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

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 disputes 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.

14. In the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , relied upon by the counsel for defendant no. 5, the Apex Court has held that the Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the Order which is to avoid multiplicity of actions. The object of Rule 10 of (2) of Order I of CPC, is not to prevent multiplicity of actions though it may incidentally have the effect. It appears to be a desirable consequence of the Rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness-and not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. Paragraphs 13 and 14 of the said judgment read as under:

13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to

be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of 10 the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck and Sons Ltd.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England*, (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:-

"The test is "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

15. Reading the plaint as a whole and the relief's sought in the plaint, it is clear that the plaintiffs could obtain complete and effective relief's from this Court in respect of the suit property against the defendants without the presence of the applicants as party defendants.

16. Merely because the applicant nos. 2 and 3 have signed and verified the present suit as constituted attorneys of the plaintiffs did not give any locus to the applicants to become party defendants to the suit. It is the case of the plaintiffs that they are the owners of the property and the relief's sought in the suit is for a declaration as such. The same is also to the knowledge of the applicants because the verification clause of the plaint states paragraphs 1 to 10 of the plaint are true to the knowledge of the applicant nos. 2 and 3. This clearly establishes that there is no lis between the plaintiffs and the applicants in so far as the present suit is concerned. The applicants if added as party defendants, would not have filed any written statement and would not have even cross examined the plaintiffs' witness. It is the case of the applicants that their interest will get prejudiced if the plaintiffs enter into a compromise with the defendants or withdraw the suit. That cannot be a reason to induct them as party defendants. If the plaintiffs really want, they may simply abandon the suit or may not effectively throw their punches.

In the matter of *Chhedi Lal Poddar and Anr. Vs. Rameshwar Singh and Ors.*

(supra), the Patna High Court in paragraph 8 and 11 has held as under:

8. A person who seek his induction as a party in the suit or who is sought to be inducted as a party should not be a person who would only be indirectly or incidentally effected by the judgment in the suit between the existing plaintiff/plaintiffs and defendant/defendants. The remedy of such a person, who may be effected by a decision in the suit indirectly or incidentally, is institute a fresh suit to decide upon his claims.

...

11. The intervener cannot be said, at this stage, to be a claimant to the title over the suit property, or even a part of it which is the central issue in the suit, only on the basis of agreement between him and the plaintiffs even if that agreement is enforceable under the law. This apprehension from suit property would only be incidental to a decree in favour of the plaintiffs, if that is passed in the suit. Naturally, O.P. No. 1 cannot claim specific performance of contract in this suit which would amount to creating a new suit, foreign to the disputes between the plaintiffs and the original defendants. If the prayer of O.P. No. 1 to be inducted as defendant is denied, then any decree that may be passed in the suit, will not be binding upon him even so far possession is concerned. In so far as the rights acquired by O.P. No. 1 under the agreement between him and the plaintiffs are concerned, that can be enforced, if the plaintiffs do not conform to the agreement, by instituting a suit for specific performance of contract and the question of the possession of the defendant over the suit property would be a natural consequence of a decree if passed in favour of the Opposite Party No. 1 as plaintiff in such a suit. Therefore, insofar as the present suit is concerned, O.P. No. 1 appears neither to be a necessary party nor proper party.

17. I find at this stage that the whole basis of the applicants' case is one of apprehension and conjectures. So far as the suit is concerned, the relief's sought in prayer clauses (a) to (d) are as under:

a) that this Hon'ble Court may be pleased to declare that the plaintiffs are the owners and in possession of the suit land bearing Survey No. 301, Hissa No. 6, CTS No. 75 and 78 admeasuring 6168.08 sq. yards at village Dahisar Taluka Borivali Mumbai Suburban, District Mumbai 400 068.

b) that this Hon'ble Court be pleased to declare that the agreement for sale is executed on 23-1-1983 by Devubai Thakur in favour of Shri Taukiahmed Khan is null and void and not binding upon the plaintiffs;

c) that this Hon'ble Court be pleased to declare the agreement dated 22-1-1988 executed by Shri Taukiahmed Khan in favour of Govind K. Badricha is null and void and not binding upon the plaintiffs;

d) that this Hon'ble Court be pleased to quash and set aside the said order dated 17-7-2004 passed by Additional Commissioner Konkan Division in Appeal No. 17 of 2002;

To come to the conclusion as prayed for in the plaint the presence of the applicants as a party defendant is neither necessary nor proper. The impleadment of the applicants would only complicate and delay the trial and call upon the Court to take upon adjudication of such issues as are not germane to the trial of the suit. The applicants had not disputed the correctness of the averments made in the plaint. The applicants cannot, because it is applicant nos. 2, 3 and a third person who have signed and verified the plaint. By rejection of the application, no prejudice will be caused inasmuch as the applicants are still at liberty to file their own suit seeking adjudication of title qua any third party or the defendants. The applicants are free to establish their own claims and titles, whatever it may be, in any independent proceedings before a competent forum. It is also settled law that when the plaintiffs can obtain complete and effective relief from the courts in respect of the subject matter in dispute against a party, it is not necessary to join any other party.

18. Moreover, the general rule in regard to impleadment of parties is that the plaintiffs in a suit being dominus litis may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiffs. Of course, this general rule is subject to the provisions of Order 1, Rule 10, Sub-rule 2 of the CPC by which the Court is given the discretion to add as a party any person who is found to be a necessary party or proper party. In my view, the applicants are neither a necessary party nor proper party to the suit.

19. For the reasons mentioned above, the chamber summons is dismissed with costs. The applicants to pay a sum of Rs. 1 lakh as costs to the plaintiffs and Rs. 25,000/- to defendant nos. 1 and 5 within four weeks by cheque drawn in favour of the respective advocates on record.