

(2011) 09 BOM CK 0132

In the Bombay High Court

Case No : Civil Revision Application No. 105 of 2006

Smt. Sushil Kaur Chhatwal, Gurbirsingh Chhatwal and
Sathirsingh Chhatwal

APPELLANT

Vs

Aurangabad Ginning and Pressing Factory Jaffar Gate and
Municipal Corporation

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

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

Citation : (2012) 1 ALLMR 187 : (2012) 1 BomCR 836 : (2012) 2 MhLj 295

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : K.C. Sant, for the Appellant; P.S. Sonpethkar, for the Respondent

Judgement

S.S. Shinde, J.—This Civil Revision Application is filed aggrieved by the order passed on application below Exhibit-10 in Misc. Civil Appeal No. 177 of 2006 dated 1st December, 2006 by the Adhoc Additional District Judge-3, Aurangabad.

2. The revision applicants herein are the original Plaintiffs, who have filed the suit against the Respondent No. 2 praying for perpetual injunction from demolishing the construction on the suit land. In the said suit, the revision applicants filed an application for temporary injunction. However, same was rejected.

Being aggrieved with the same, the applicants filed Misc. Civil Appeal No. 177 of 2006 before the District Court along with application Exhibit-5 for temporary injunction.

The Respondent No. 1 herein thereafter filed application Under Order 1 Rule 10(2) of CPC for addition of parties in Misc. Civil Appeal No. 177 of 2006. The averments in the said application filed by the Respondent No. 1 herein are as under:

1. That, the applicant being owner and possessor of the property and portion of Survey No. 57, having Municipal No. 4-18-47/1, C.T.S. No. 13162 and 13163,

situated at Jafar Gate, Aurangabad. They filed the suit bearing R.C.S. No. 218/1972 for possession of a room admeasuring 10" X 10" and for perpetual injunction for the rest of portion against (1) Nutanbai, (2) Ravelsingh, (3) Pratsingh and (4) Mir Maqsood Ali Khan. After hearing the suit on merit, it came to be decreed by the Hon"ble 2nd Joint Civil Judge, Junior Division, at Aurangabad, by its judgment and Decree dated 30.9.1975. The defendants challenged said decree by filing R.C.A. No. 195/1975 in the Hon"ble District Court, Aurangabad, and said appeal came to be allowed on 25.10.1978. Against the said decree of Appellate Court, the present applicant preferred IInd Appeal No. 189/1979 in the Hon"ble High Court and said appeal came to be allowed on 16.12.1991, but, due to interpolation in the said judgment in High Court, the applicant filed C.A. No. 415/2003 for correction of judgment and deletion of interpolation. In said C.A. the husband of the Plaintiff No. 1 Sukhbirsingh, who purchased said property during pendency of the suit was also unpleaded as party and after hearing him, C.A. No. 415/2003 came to be allowed on 21.09.2004. Sukhbirsingh unsuccessfully challenged the said order by filing SLP No. 21339/2004 in Hon"ble Supreme Court of India.

2. That, the applicant filed Reuglar Darkhast No. 104/1994, for execution of decree passed in R.C.S. No. 218/1972 and confirmed by Hon"ble High Court. The applicant came to know that the husband of present Plaintiff No. 1 is intending to start construction on suit property and therefore, he filed application for temporary injunction restraining Sukhbirsingh and Ors. and Defendants from changing the nature of suit property or alienating the said property or creating third party interest on 6.7.2005. The Hon"ble 5th Joint Civil Judge, Junior Division, Aurangabad, after hearing pleased to allow the application on 22.8.2005. During the pendency of said application status-quo order was passed on 8.7.2005. In spite of injunction order, Sukhbirsingh and after his demise the present Plaintiffs continued the construction work and therefore, the applicant filed an application U/o 39 Rule 2A of Code of Civil Procedure, which is pending.

3. As such, the construction work of the Plaintiffs is during enforcement of injunction order passed by the Court at the instance of the Defendants as such, the applicant is interested party being title holder of the suit property. The Plaintiffs have hided all above referred material facts from the Hon"ble 2nd Joint Civil Judge, Senior Division, Aurangabad, and tried to obtain equitable relief of temporary and perpetual injunction by misguiding the Hon"ble Court. When, the applicant came to know about filing of the said suit, the applicant also filed application for adding him as party in R.C.S. No. 870/2006 and the said application is for consideration before the said Court.

4. However, the present Appellant/original Plaintiff filed appeal in this Hon"ble Court and thereby challenging the order of 2nd Joint Civil Judge, Senior Division, Aurangabad, issuing show cause notice and not granting interim relief. The said appeal is also fixed for final hearing in this Hon"ble Court. As such, the applicant being title holder and interested party in the suit and the applicant wanted to

protect the illegal construction made by her by violating the order of injunction and that is also on the property of the applicant. As such, the applicant may kindly be added as party to this appeal. The applicant is interested party in the present appeal.

HENCE, IT IS PRAYED THAT:

This application may kindly be allowed and the applicant may be added as Respondent in the present appeal and oblige.

3. The said application filed by the Respondent No. 1 herein was allowed by Adhoc Additional District Judge-3, Aurangabad thereby directing the revision applicants herein, to add Respondent No. 1 as Defendant in appeal within three days from the date of order. Hence, this Civil Revision Application.

4. It is the case of the revision applicants that late Sukhbirsingh Tarasingh Chatwal, the husband of revision applicant No. 1 and father of applicant Nos. 2 and 3, was the owner and possessor of property bearing CTS No. 13163 admeasuring 1411.5 Sq. Meters (part of Survey No. 56) situated at Bahadurpura, Jalna Road, Aurangabad. Late Sukhbirsingh was in possession of the property since 1971. N.A. permission was granted by the Collector on 18th September, 1992. Since, 1979, there was an entry of late Sukhbirsingh in the P.R. card. In 1992, late Sukhbirsingh also constructed a compound wall for protection of the suit property. He submitted a plan for construction permission. However, the Respondent No. 2 herein neither granted permission nor rejected the permission, therefore, in view of the deeming provision under the Maharashtra Regional and Town Planning Act, there is a deemed permission, and therefore, the construction of building as per the plan was started. Sukhbirsingh died on 15.04.2005 and the names of the present applicants have been recorded as owners of the property being legal heirs of late Sukhbirsingh. In the meanwhile, the Respondent No. 2 sanctioned the plan and granted permission to construct the building as per the plan by its order dated 23rd June, 2005.

After the death of late Sukhbirsingh, the names of the revision applicants are recorded in the city survey record. It is the case of the applicants that some ill-motivated people have made complaint to the Respondent No. 2 stating that this construction is illegal and it be demolished.

The Respondent No. 2 thereafter issued the notice to the revision applicants. The applicants replied the said notice and pointed out that they have not committed any illegal act nor they have violated construction permission. It is further submitted that the Respondent No. 2 by ignoring the permission granted by its own authority is now bent upon to demolish the construction at the behest of some ill-motivated persons. Therefore, the applicants herein filed the Civil Suit bearing Regular Civil Suit No. 870 of 2006 in the Court of Civil Judge, Senior Division, Aurangabad. It is submitted that application for temporary injunction was also filed. However, same came to be rejected by the Civil Judge, Senior Division, Aurangabad. Therefore, the applicants filed Misc. Civil Appeal before the

District Judge, Aurangabad. The application for temporary injunction was also filed. It is the case of the applicants that the Respondent No. 1 without there being any concern with the dispute in the suit, made application on flimsy grounds and prayed for adding it as party Respondent in the appeal. In fact, the Respondent No. 1 has No. concern with the property in question.

The say was filed by the applicants to the application filed by the Respondent No. 1 for adding him as party stating therein that such application is not maintainable. The Plaintiffs themselves are the masters of their suit and they can not be compelled to add any party to the litigation. It is submitted that the applicants have not claimed any relief against the Respondent No. 1 and the applicants carrying out the construction as per the plan submitted and sanction granted by the Respondent No. 2 herein. It is further the case of the applicants that when there is No. relief prayed against the Respondent No. 1, directing the applicants to add the Respondent No. 1 as party in the appeal itself is abuse of process of law and further it would add to complications. It is submitted that No. person can be forced to litigate against the person who is not concerned with the subject matter of the suit. It is further submitted that the Respondent No. 1 is neither to gain nor to loose in the litigation pending between the applicants and the Respondent No. 2. Therefore, for all these reasons, the impugned order allowing application of the Respondent No. 1 and directing the revision applicants to add him as party Defendant in the suit, ought not to have been passed by the Appellate Court.

5. The learned Counsel appearing for the revision applicants submits that before filing of suit bearing Regular Civil Suit No. 218 of 1997, the property of the Respondents was sold to one Narsing Kandi by registered sale deed. However, when the Respondent No. 1 firm moved Execution Petition No. 104 of 1994, said Kandi has also moved Execution Petition No. 166 of 1993 pursuant to the alleged Sale Deed. Thus, the Respondent No. 1 has No. concern with the said property in suit. It is submitted that the Civil Suit bearing No. 218 of 1972 was filed by Respondents for possession of two huts admeasuring 10 feet X 10 feet abutting to Jalna Road in Survey No. 57 and for injunction not to disturb the possession over the suit land. The Respondents have No. concern with the property bearing CTS No. 13163. By suppressing material facts and by misrepresentation the suit came to be filed only with an intention to grab the property when in fact they have No. concern whatsoever with the property owned by the applicants. It is submitted that the property mentioned in the prayer clause is 12 cra105.06 totally different than the property belonging to the applicants. Further, in the entire suit CTS number is not mentioned though CTS number is given in the year 1971. It is submitted that the said suit was decreed on the basis of a Map Exh. 118, which clearly shows the property is in Dawoodpura i.e. towards southern side of Jalna road, whereas the property of the applicants is on northern side of Jalna Road. It is submitted that, the Defendants preferred appeal. In the Second Appeal, the name of Nutanbai from whom the suit property was purchased, was deleted. It is further submitted that it is pertinent to note that said Sukhbirsingh

was never party in the entire suit proceeding, i.e. Regular Civil Suit No. 218 of 1972, Regular Civil Appeal No. 195 of 1978, Second Appeal No. 189 of 1979 and Civil Application No. 415 of 2003. The judgment delivered in suit is a judgment in personum and therefore, since late Sukhbirsingh was not a party to it, it is not binding upon the applicants.

It is further submitted that as per the record from Registrar of Firms, the firm Aurangabad Ginning and Pressing Factory, Aurangabad was dissolved way back in the year 1963 itself and more specifically on 31st March, 1963. The alleged power of attorney in favour of Kantilal Mithawala given by one Minichor Chinoy is false and wrong. Redelelegation of power that too, when the firm itself is not in existence is not recognized by law. It is further submitted that at the time of filing of suit, the width of Jalna road was 20 feet, whereas now the width of road is 132 feet. Even now the property of the applicants is 40 feet away from Jalna Road. It is further submitted that the area of suit property shown in the plaint is 15000 feet, whereas, the area shown below Exh. 118 comes to be 14000 feet. The area of CTS No. 13162 is 10800 feet, thus, total comes to 25800 feet. However, the decree is only to the extent of 14000 feet. On this ground also the property in Regular Civil Suit No. 218 of 1972 and the property in possession of the applicants does not match anywhere.

It is further submitted that in the judgment of Mantralaya in proceedings bearing No. LAND/3904/782/CR123/L.1/CR117(12)/2004/A and R, it is clearly held that the property is different than suit property bearing Survey No. 57. It is also held that Kantilal Mithawala does not have valid power of attorney. This judgment was given in view of the judgment passed by this Court. It is submitted that there is a report of Bailiff in the Execution Proceedings at Exhibit-50 that the property mentioned in prayer clause of suit No. 218 of 1972 is not identifiable. It is further mentioned that the plot No. 4-18-47/1 i.e. the property of the applicants is on west side of property mentioned in civil suit No. 218 of 1972 and it is not concerned with the property involved in present proceeding. In No. any proceeding including the Execution Petition, the Respondent No. 1 has ever sought that they have lost possession. Thus, the Respondent No. 1 is not necessary party in the proceeding filed by the applicants and hence, the Respondent No. 1 has No. locus standi.

It is further submitted that the Municipal Corporation has filed affidavit in Writ Petition No. 3628 of 2006. In the said affidavit, it is clearly stated by the Municipal Corporation that, the Corporation has granted construction permission by duly considering the ownership of the applicants. It is further submitted that, the Respondent No. 1 had taken objection and after considering that also, it was found that the applicants are the owners. Hence, the permission granted by the Corporation is by following due process of law. It is submitted that against the order of Mantralaya, a Writ Petition is filed by Respondent No. 1 and the same is pending and also there is No. stay by this Court. Therefore, relying upon the averments made in the Civil Revision Application, grounds raised therein,

Annexures to the said Revision Application and the written notes of arguments filed by the applicants, the learned Counsel appearing for the revision applicants would submit that this Revision Application deserves to be allowed.

6. On the other hand, the learned Counsel appearing for the Respondent No. 1 submitted that Revision Application filed against the order allowing the addition of party and therefore, the order is interlocutory and No. Civil Revision Application is maintainable. Because of the order impugned in the Civil Revision Application, the proceedings before the Lower Court are not likely to be decided finally. There is also No. final decision in the case. Thus, at the outset, it is submitted that the Civil Revision Application is not maintainable and there is No. question of hearing on merits of the case.

The learned Counsel further submitted that the Respondent No. 1 Aurangabad Ginning and Pressing Factory had filed Civil Suit bearing Regular Civil Suit No. 218 of 1972 before the Civil Judge, Junior Division, Aurangabad against one Nutanbai and three others for injunction and declaration of ownership. The Plaintiff had claimed that the Plaintiff is owner of the land survey No. 57 bearing Municipal No. 4-18-47/1 admeasuring 19A 8 G situated at Jafar Gate, Bahadurpura, Aurangabad. It is further submitted that as the Defendant in the said suit had tried to encroach over portion of survey No. 57 and erected hut of 10 ft. x 10 ft., the suit was filed claiming injunction on the basis of title. The learned Judge has framed issues and held that the Plaintiff i.e. Respondent No. 1 herein, is owner of the suit property. The learned Counsel appearing for the Respondent No. 1 invited my attention to the copy of the judgment in Regular Civil Suit 218 of 1972, which is annexed with the written notes of arguments. It is proved that, the Plaintiff i.e. Respondent No. 1, is owner and is in possession of the suit property and granting decree for injunction and also recovery of possession of property admeasuring 10 ft x 10 ft. is sought by the Plaintiff.

It is submitted that aggrieved by the judgment and decree in Regular Civil Suit No. 218 of 1972, the Regular Civil Appeal No. 195 of 1975 was filed before the District Court, Aurangabad and same came to be allowed. Against that, the Plaintiff had filed Second Appeal No. 189 of 1979 before this Court. It is submitted that by judgment dated 16.12.1991, this Court has allowed the Second Appeal and restored the decree of the trial Court. Appeal was allowed in entirety. However, there was interpolation and tampering in the judgment. Para No. 17A on page 24A was added and in the operative order words "as against Defendant No. 2" have been added. In view of this, the Plaintiff filed Civil Application No. 415 of 2003 before this Court. In the said application, one Sukhbirsingh S/o Tarasingh Chatwal suo motu appeared and filed Civil Application No. 5402 of 2004 and stated that he had purchased the suit property during the pendency of Appeal, by registered sale deed dated 27.10.1978 and he claimed that he is in possession of the suit property and if this Civil Application is allowed, he is also likely to be affected.

This Court however considered the application and allowed his intervention. He

was heard at length along with other Respondents and this Court held that there was tampering and directed to correct the judgment accordingly. Against the said judgment of this Court, the husband of the present applicant No. 1-Sukhbirsingh Chatwal had approached the Hon"ble Apex Court in SLP No. 21339 of 2004 and same was dismissed on 25.10.2004.

It is submitted that during the pendency of the suit, the said Sukhbirsingh had purchased property and in violation of the Court order, he had started construction in the year 2005 over the suit property. It is submitted that the present Plaintiff had filed Regular Darkhast No. 104 of 1994. When in the year 2005, construction was started, the decree holder Plaintiff has filed injunction application on 06.06.2005 and the said application was allowed by the Civil Judge, Junior Division, Aurangabad on 22nd August, 2005 and thereby the Plaintiffs are restrained from carrying out construction over the suit 21 cra105.06 property. However, the construction is still continuing and therefore, the contempt proceedings are pending before the Trial Court.

It is submitted that in utter disregard of order of this Court, the present applicant Sushil Kaur and Ors. have executed sale deed in favour of third party in respect of suit property. Therefore, time and again, complaint was lodged by present Plaintiff with the Municipal Corporation and other authorities. It is further submitted that one news item was published in the news paper and therefore, the Regular Civil Suit No. 870 of 2006 was filed by the revision applicants, in which No. injunction was granted. As soon as the Respondent No. 1-Aurangabad Ginning and Pressing Factory came to know about the said suit, filed application for addition of parties. It is submitted that the present Respondent No. 1-Aurangabad Ginning and Pressing Factory has filed application for addition of parties and same application was allowed by order dated 05.12.2005. It is submitted that the applicants herein by concealing all real material facts and litigation by filing Suit and Appeal have obtained the order of injunction. The illegal construction have been carried out in the said property. The sale deed is executed in violation of the order of this Court. It is further submitted that the Respondent No. 1 has filed Writ Petition No. 3628 of 2006 before this Court. In the said Writ Petition, the Municipal Corporation, Aurangabad has clearly stated that permission of construction given to Sushil Kaur Chatwal and Ors. is revoked by order dated 14.08.2006 and Corporation is not reconsidering the same.

The learned Counsel appearing for the Respondent No. 1 invited my attention to the order passed in the said Writ Petition and Review Petition. It is submitted that action taken by the Municipal Corporation, Aurangabad is in pursuance of constant complaint made by Respondent No. 1 herein, who is real owner of the factory. It is submitted that the applicants have No. regard to the law and the orders of this Court and flouted the same. It is submitted that in a proceedings i.e. Civil Application No. 415 of 2003, said Sukhbirsingh Tarasingh Chatwal, the husband of the applicant No. 1, had made a statement that he had purchased the suit property from Defendant No. 1-Nutanbai and he is likely to be affected

by the decision of this Court. It is further submitted that now the applicants in the subsequent proceedings are stating that the suit property i.e. the property purchased by them is different from the suit property. This is totally and intentionally false statement on oath in order to mislead the Court.

It is further submitted that the suit property which is purchased by the husband of the present applicant No. 1 during the pendency of the suit from Nutanbai, and therefore, the Respondent No. 1 herein who succeeded in Civil proceedings against Nutanbai is necessary party to the suit filed by the applicants Plaintiffs. The learned Counsel appearing for Respondent No. 1 in support of his contention that the Respondent No. 1 is necessary party to the suit invited my attention to the title clause of Civil Suit bearing Regular Civil Suit No. 218 of 1972 and submitted that Nutanbai is the Respondent No. 1 in the said suit, which was filed by Respondent No. 1 herein. The learned Counsel further invited my attention to the title clause in Second Appeal No. 189 of 1979, where the Aurangabad Ginning and Pressing Factory i.e. Respondent No. 1 herein is Appellant and Nutanbai is Respondent No. 1 therein. The learned Counsel further invited my attention to the title clause of the Writ Petition No. 3628 of 2006 in which the Respondent No. 1 is the Petitioner and the Municipal Corporation, Aurangabad is Respondent No. 1 and there are also added Respondents in the said Writ Petition i.e. Sukhbirsingh Chatwal, Sushilkaur Chatwal, Gurbirsingh Chatwal, Sathirsingh Chatwal and Rawelsingh Arjunsingh. Therefore, the learned Counsel would submit that the applicants herein were made party Respondents even in the said Writ Petition. The learned Counsel further invited my attention to Review Application No. 56 of 2010 in Writ Petition No. 3628 of 2006, in which the applicants herein appear to be revision applicants in those proceedings and the Respondent No. 1 is party Respondent No. 1 even in those proceedings. The learned Counsel further invited my attention to other documents and also submitted that the Respondent No. 1 is a necessary party in the suit, and therefore, the Appellate Court has rightly allowed the application filed by the Respondent No. 1 and directed the applicants to add the Respondent No. 1 as Respondent in the appeal. Therefore, such order cannot be interfered with or upset in the Revisional jurisdiction.

7. I have given due consideration to the rival submissions and I have also perused the Civil Revision Application, Annexures thereto, other documents placed on record and written notes of arguments filed by the learned Counsel for the respective parties. At the outset it would be relevant to reproduce the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, which read thus:

Order 1 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.

From perusal of the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, it is abundantly clear that the Court may at any stage of the proceedings, either upon or without the application of either party, may allow to join as party to the proceedings 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. Therefore, the powers exercised by the Adhoc District Judge-3, Aurangabad while allowing the application of the Respondent No. 1 herein for adding them as party to the suit filed by the applicants are within the fore corners of law and certainly governed by the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure.

Therefore, in my considered view, the Adhoc District Judge-3, Aurangabad has acted within the fore corners of the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure. The District Judge had power to entertain the application filed by the Respondent No. 1 and such powers are exercised by the concerned Court properly.

8. From perusal of the contents of the application filed by the Respondent No. 1 before the District Court, Aurangabad, it is abundantly clear that in various proceedings, the Respondent No. 1 was party. It is also not in dispute that the suit bearing Regular Civil Suit No. 218 of 1972, which was filed by the Respondent No. 1 herein in the year 1972 against Nutanbai and three others, the husband of the applicant No. 1 did purchase the property from said Nutanbai i.e. plot C.T.S. Nos. 13162 and 13163. Therefore, it is clear that Nutanbai, the vendor of the applicants and Ors. were restrained from carrying out any construction over the disputed site from 30.09.1975. It is also relevant to mention that the judgment of Regular Civil Suit No. 218 of 1972 was challenged in Second Appeal No. 189 of 1979, wherein this Court has confirmed the decree passed by the trial Court in Regular Civil Suit No. 218 of 1972. Late Sukhbirsingh did file SLP before the Hon'ble Apex Court, aggrieved by the judgment of this Court in Second Appeal No. 189 of 1979. This position is not disputed by the applicants. Therefore, said Nutanbai was admittedly party in Regular Civil Suit No. 218 of 1972, wherein the Respondent No. 1 herein was Plaintiff and Nutanbai was Defendant and she was restrained from carrying out the construction on disputed site. As stated earlier, late Sukhbirsingh purchased the property from Nutanbai and she was 30 cra105.06 restrained as stated above. As such Sukhbirsingh stepped into the shoe of Nutanbai. Therefore, the Appellate Court after appreciating the rival contentions and documents brought on record held that, Sukhbirsingh cannot say that the judgment and decree passed in Regular Civil Suit No. 218 of 1972 on 30th September, 1975 is not binding on him because he was not party to the said suit. The deceased Sukhbirsingh had obtained the permission for construction on 23rd June, 2005, however, he did not

disclose that the judgment and decree passed in Regular Civil Suit No. 218 of 1972 dated 30th September, 1975 to the Municipal Corporation, while obtaining the permission.

9. The Appellate Court after appreciating the rival submissions and documents placed on record, reached to the conclusion that, the case in hand admittedly on the basis of a decree, the execution proceeding bearing No. 104 of 1994 and 166 of 1993 came to be filed against the applicants herein for getting the possession as per the judgment and decree and restraining order of perpetual injunction from causing any illegal interference either personally or through their agents and servants in possession of the Plaintiff i.e. Respondent No. 1 herein. Therefore, the appellate Court reached to the conclusion that, "it can safely be said that in view of the judgment of the Regular Civil Suit No. 218 of 1972 and pendency of execution proceeding the applicant has substantial interest in the suit property." It is further observed by the appellate Court that, "the applicant i.e. Respondent No. 1 herein is required to be added as party to the appeal as Respondent."

10. On careful perusal of the documents produced by the Respondent along with the written notes of arguments and averments in the application, which was filed before the appellate Court for adding him as party in the appeal, it is crystal clear that the Respondent No. 1 has a substantial interest in the suit property. Therefore, for complete and effectual disposal of the proceeding filed by the applicants herein before the Courts below, the Respondent No. 1 is a necessary party.

The appellate Court on perusal of averments in the application and number of documents produced on record, has reached to the definite and correct conclusion that the Respondent No. 1 is a necessary party in the proceedings filed by the applicants, and therefore, I do not find any reason to interfere in the judgment and order passed by the Adhoc District Judge-3, Aurangabad, which is impugned in this Revision Application.

11. The Supreme Court in the case of "Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Ors." reported in (1992) 2 S.S.C. 524 held that while considering the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, in case of prayer for addition of necessary party, the Court has judicial discretion which it has to exercise having regard to facts and circumstances of the case. In exercise of this discretion court can direct a Plaintiff, though dominus litis, to implead a person as a necessary party Defendant.

12. The Supreme Court in the case of Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, , while interpreting the provisions of Order 1 Rule 10(2) of the CPC held that, while determining who is proper party of the proceedings, if a party can show a fair semblance of title or interest, he can certainly file an application for

impleadment.

13. The contentions on merit of the parties are not taken away by the impugned judgment and order. The revision applicants can agitate all the points available to them during the course of trial or hearing before the appropriate Courts. Therefore, viewed from any angle, in my opinion, interference in the impugned judgment and order in revisional jurisdiction is wholly unwarranted, since the power/jurisdiction exercised by the Adhoc District Judge-3, Aurangabad is perfectly sustainable under the provision of Order 1 Rule 10(2) of the Code of Civil Procedure. Therefore, the impugned judgment and order stands confirmed. The Civil Revision Application stands rejected. Rule stands discharged.