

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 05.01.2022 PASSED IN I.A. NO.3 UNDER ORDER I RULE 10(2) OF CPC IN O.S.198/2020 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE AT NELAMANGALA VIDE ANNEX-D AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 04.09.2023, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THIS COURT MADE THE FOLLOWING:

### **ORDER**

This writ petition is filed by the petitioner-plaintiff under Article 227 of the Constitution of India assailing the order dated 05.01.2022 passed on I.A.3 filed under Order I Rule 10(2) of Civil Procedure Code (hereinafter referred to as, '**CPC**') in O.S.No.198/2020 on the file of Additional Senior Civil Judge, Nelamangala (hereinafter referred to as, '**the trial Court**'), whereby the I.A.No.3 was allowed.

**2.** The parties are referred to as per their ranking before the trial Court.

**3.** Brief facts giving rise to filing of this petition are that late Sri.Mariyappa S/o late Sri.Puttegowda, the father of defendant Nos.1 to 5 & father-in-law of defendant No.6 & grand father of defendant Nos.7 & 8, has executed an

agreement of sale dated 10.06.2016 in favour of the plaintiff in respect of land bearing Sy.No.108 measuring 2 acre 1 guntas situated at Machohalli Village, Dasanapura Hobli, Bengaluru North Taluk.

**4.** It is averred that after the death of Sri.Mariyappa, the defendant Nos.1 to 8, being the legal heirs, have become the absolute owners in possession of the suit schedule property. The legal heirs have refused to execute the registered sale deed in favour of the plaintiff. Therefore, the plaintiff has filed a suit for specific performance of the contract. During the pendency of the suit, the respondent Nos.9 to 53 herein have filed an application i.e., I.A.No.3 under Order I Rule 10(2) of CPC to come on record as defendant Nos.9 to 53 in the suit and the same came to be allowed.

**5.** Sri.Sridhar N., learned counsel for the petitioner submits that the trial Court has committed grave error in allowing I.A.No.3 filed under Order I Rule 10(2) of CPC. The proposed defendants are not parties to the agreement of sale dated 10.06.2016 and the suit being one for

specific performance, the proposed defendants are neither necessary nor proper parties. The proposed defendants are claiming that they are the purchasers of sites carved out from the suit schedule property. However, in the sale deed there is no description about the Sy.No.108 of Machohalli Village, Dasanapura Hobli, Bengaluru North Taluk and further assertion that a layout has been formed after obtaining permission and they are in possession of the suit schedule property is without any basis.

**6.** It is submitted that the suit schedule property is an agricultural land, which comes under the green zone in Arkavathi and Thipagondanahalli valley basin and the said land is not converted for residential purpose and the contrary contentions are without any basis. It is further submitted that a third party to the contract is not necessary and proper party to the suit for specific performance of the contract. Hence, he seeks to allow the writ petition. In support of his contentions, learned counsel for the petitioner has relied on the following decisions:

- i. AIR 2015 SC 1264 in the case of Baluram v. P.Chellathangam and others;

- ii. AIR 2019 SC 3577 in the case of Gurmit Singh Bhatia vs. Kiran Kant Robinson and ors.
- iii. 2020 (5) KCCR 586 in the case of Rashmi alias Uma Surir Anurshettar vs. Prema Kiran Anurshettar and others.

**7.** Sri.M.V.Sridhar Chakravarthi, learned counsel appearing for the contesting respondents supports the impugned order and submits that the original land owner Sri.Mylaraiah, has sold the suit schedule property through two sale deeds dated 04.11.1991 and 05.04.1993 to one Smt.Kamamma and the revenue records were mutated in the name of Smt.Kamamma. The said Smt.Kamamma has sold the suit schedule property in favour of Sri.Mariyappa vide registered sale deed dated 30.10.1996 and the revenue records were mutated in the name of Sri.Mariyappa, now deceased.

**8.** It is submitted that Sri.Mariyappa has obtained necessary permissions/sanction plan approved and formed 60 sites in the suit schedule property and sold the said

sites to the proposed defendant Nos.9 to 53 and others between 1998 and 2004. The contesting respondents are the bonafide purchasers of the sites having been in lawful possession as per the registered sale deeds in their favour.

**9.** It is also submitted that one Smt.Siddamuthamma and others have tried to interfere with the possession of the sites of respondent Nos.9 to 53, hence, they have given the police complaint and also filed a suit for injunction. The said suit came to be decreed restraining Smt.Siddamuthamma and others from interfering with peaceful possession and enjoyment of their respective sites. The said Smt.Siddamurthamma and 18 others have filed an application under Section 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 before the Assistant Commissioner seeking restoration/resumption of suit schedule property in favour of original grantee. The respondent Nos.9 to 53 were not made as a parties. The Assistant Commissioner, Bengaluru North Sub-Division vide order dated

05.07.2014, has allowed the application for restoration of land. Being aggrieved by the said order, Sri.Mariyappa filed an appeal before the Deputy Commissioner, Bengaluru Urban District. The appellate authority has passed an interim order of stay of the order of the Assistant Commissioner. On the strength of the order of Assistant Commissioner, said Smt.Siddamuthamma got the revenue records mutated in her name. The respondents Nos.9 to 53 have filed an application to implead in the appeal, which came to be allowed. On 22.03.2019, the Deputy Commissioner has allowed the appeal by setting aside the order of Assistant Commissioner.

**10.** It is contended that, being aggrieved by the order of the appellate authority, Smt.Siddamuthamma has filed writ petition in W.P.No.18782/2019, which came to be dismissed and she has filed writ appeal in W.A.No.1142/2021 which also came to be dismissed. The legal heirs of late Smt.Siddamuthamma have filed O.S.No.191/2019 and O.S.No.215/2020 seeking partition.

**11.** It is further contended that in collusion, agreement of sale dated 10.06.2016 in respect of suit schedule property has been created by the petitioner and Sri.Mariyappa and filed collusive suit in O.S.No.198/2020 seeking relief of specific performance without making the respondent Nos.9 to 53 as a parties to the suit. The respondent Nos.9 to 53 filed an application under Order I Rule 10(2) of CPC, which came to be allowed. The said order is under challenge in the present writ petition.

**12.** It is also contended that the alleged agreement of sale is a void contract, as the Sub-Registrar, Shivaji Nagar, has given endorsement that they have not embossed the agreement of sale and on the date of execution of the unregistered agreement of sale, Sri.Mariyappa was not having the right to enter into contract with the plaintiff, as he was not the owner of the property. The suit filed by the petitioner against respondent Nos.1 to 8 is a collusive suit with an intention to deprive the lawful ownership of respondent Nos.9 to 53, which they have derived under the registered sale deeds

much prior to the agreement of sale in question. If any order is passed in the suit would prejudice the rights of respondent Nos.9 to 53. Hence, the contesting respondents are necessary parties to the suit. In support of his contentions, learned counsel places reliance on the following judgments:

- i. 2014 2 GCD 1294 in the case of Parul Jaykantbhai Shal Poa Snehalbhai Jaykantbhai Shah vs. New India Industries Ltd. & Ors.;
- ii. (2018) 15 SCC 614 in the case of Robin Ramjibhai Patel vs. Anandibai Rama alias Rajaram Pawar and others; and
- iii. AIR 2022 SC 4710 in the case of Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (D) Thr. LRs. And others.

**13.** I have heard the learned counsel for the petitioner, learned counsel for the contesting respondents, perused the material available on record and the decisions cited by the parties.



**14.** The petitioner-plaintiff has filed suit for specific performance of the agreement of sale dated 10.06.2016 against the legal heirs of Sri.Mariyappa. In the said suit, the contesting respondents have filed an application under Order I Rule 10(2) of CPC for impleadment as defendant Nos.9 to 53. The said application came to be allowed by the trial Court. Being aggrieved, the plaintiff has filed this petition. The only question that would arise for consideration in this petition is "Whether a third party to the agreement of sale dated 10.06.2016 is necessary or proper party to the suit for specific performance of the contract".

**15.** For consideration of the above question, it would be useful to refer the decision of the Hon'ble Supreme Court in the case of ***Kasturi vs. Iyyamperumal and others*** reported in **(2005) 6 SCC 733** wherein paragraph Nos.14, 15, 16, 17, 18, and 22 which are of relevance reads as under:

***"14.*** Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether Respondents 1 and 4 to 11 are necessary parties or not. In our opinion, Respondents 1 and 4 to 11 are not necessary parties

*as an effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In the case of Anil Kumar Singh v. Shivnath Mishra [(1995) 3 SCC 147] , it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation: (SCC p. 150)*

*"Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."*

*(emphasis supplied)*

**15.** *As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 1 and 4 to 11 before the court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a*

*contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap v. Sambhu Saran Sinha [(1996) 10 SCC 53] this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be*

*turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the*

*stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.*

**16.** *That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed*

*discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.*

**17.** *It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would be open to the court to decide the question of possession of a third party or a stranger as first the lis to be decided is the enforceability of the contract entered into between the appellant and Respondent 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In *Amon v. Raphael Tuck and Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357 : (1956) 2 WLR 372] it has been held that a person is legally interested in the answers to the controversies only if he can*

*satisfy the court that it may lead to a result that will affect him legally.*

**18.** *That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis 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, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.*

**22.** *For the reasons aforesaid, in our view, the stranger to the contract, namely, Respondents 1 and 4 to 11 making claim independent and adverse to the title of Respondents 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party-defendants in the suit for specific performance of contract for sale.*

**16.** The Hon'ble Supreme Court in the case of **Gurmit Singh Bhatia v. Kiran Kant Robinson and Ors.**, reported in **AIR 2019 SC 3577** has reaffirmed the ratio laid down in **Kasturi's** case supra.

**17.** The Hon'ble Supreme Court in the case of ***Robin Ramjibhai Patel vs. Anandibai Rama alias Rajaram Pawar and others*** reported in **(2018) 15 SCC 614**, at paragraph Nos.7, 8 and 9, held as under:

*"7. As it appears from the aforesaid paragraph this Court accepted the status of dominus litus of the plaintiff and proceeded to hold that if the plaintiff did not want to join the rival claimants as defendant in the pending suit, the risk was totally of the plaintiff and he cannot be forced to join them as party-defendant.*

**8.** *In the aforesaid context, this Court also considered the provisions of Order 1 Rule 10 CPC and in para 7 it expressed its view that the relevant provisions show that the necessary parties in a suit for specific performance of a contract for sale are not only parties to the contract or their legal representatives but also a person who had purchased the contracted property from the vendor. It was further elaborated that: (Kasturi case [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] , SCC p. 738, para 7)*

*(emphasis supplied)*

*"7. ... In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A*



*purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party."*

**9.** *In our considered opinion, the judgment of the three-Judge Bench in Kasturi case [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] recognises this special status of a plaintiff which is well settled by several earlier judgments also and when the plaintiff wants to implead certain persons as defendants on the ground that they may be adversely affected by the outcome of the suit, then interest of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors."*

*(emphasis supplied)*

**18.** The Hon'ble Supreme Court in the case of **Sumtibai and others vs. Paras Finance Co. Regd.Partnership Firm Beawer (Raj.) Through Mankanwar (SMT) W/o Parasmal Chordia (Dead) and others** reported in **(2007) 10 SCC 82**, in paragraph Nos.9 and 14 held as under :

*"9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi v. Iyyamperumal [(2005) 6 SCC 733] . He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.*

*14. In view of the aforesaid decisions we are of the opinion that Kasturi case [(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."*

*(emphasis supplied)*

**19.** The Hon'ble Supreme Court in the case of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others** reported in **(2010) 7 SCC 417**, at paragraph Nos.24 to 27 held as under:

*"24. We may now give some illustrations regarding exercise of discretion under the said sub-rule.*

*24.1 If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and*

*10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.*

**24.2** *If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party insofar as the prayer for actual possession.*

**24.3** *If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.*

**24.4** *If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On*

*the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in*

regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

**25.** *In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.*

**26.** *If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in Kasturi [(2005) 6 SCC 733] and Sumtibai [(2007) 10 SCC 82] are with reference to the facts and circumstances of the respective cases. In Kasturi [(2005) 6 SCC 733] this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In Sumtibai [(2007) 10 SCC 82] this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai [(2007) 10 SCC 82] did not lay down any proposition that anyone claiming to have any*

semblance of title is a necessary party. Nor did Kasturi [(2005) 6 SCC 733] lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.

(emphasis supplied)

**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. The 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."*

**20.** The Hon'ble Supreme Court in the case of **Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram**

**Bhedi (D) Thr. LRs. and others** reported in **AIR 2022**

**SC 4710** in paragraph Nos.18, 19 and 20 held as under:

*"18. It could thus be seen that 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. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed.*

*19. As already discussed hereinabove, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the rights of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants. Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of Kasturi (supra) is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus:*



*"7. ....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are" (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."*

**20.** *It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party."*

**21.** Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court referred supra, the question that arises for consideration in this petition is dealt with as herein below.

**22.** In the case on hand, the prior purchasers of the sites are seeking for impleadment in the suit filed by the petitioner seeking for specific performance of the agreement of sale dated 10.06.2016. The various narration of facts referred supra, clearly indicate that the

proposed defendants have registered sale deeds in their favour and are also claiming that they are in possession of respective sites prior to the execution of unregistered agreement of sale dated 10.06.2016. On close scrutiny of the registered sale deed available on record would make it abundantly clear that the subject sites are carved out from Sy.No.108 of Machohalli village, Dasanpura Hobli, Bengaluru North Taluk. The contesting respondents have specifically contended that with an intention to defeat the right accrued in their favour under the registered sale deeds which are prior to the agreement of sale, the present suit is filed based on concocted and fabricated stamp paper and in collusion without making the contesting respondents as parties to the suit. The contesting respondents have asserted that they are the title holders prior to the agreement of sale and are in possession of the suit schedule property, the assertion of the contesting respondents is an independent right and no right derived under the subject sale agreement. The only question that would arise as to whether the prior purchasers are necessary and proper parties to the suit for

specific performance of the contract. In the considered view of this Court, the proposed respondents are necessary and proper parties to the suit for the following reasons:

- a. If the proposed respondents are not allowed to participate in the suit filed by the plaintiff for specific performance and if the said suit is decreed in favour of the plaintiff it would affect the independent right claimed/asserted by the contesting respondents based on their registered sale deed which is prior to the agreement of sale would lead to multiplicity of proceedings.
- b. If the application for impleadment is rejected, no effective decree can be passed in favour of the plaintiff in the absence of such party as the proposed defendants are claiming that they are registered sale deed holders in possession.
- c. There is no dispute with regard to preposition of law that if the third party is impleaded in the suit, the scope of the suit for specific performance would be enlarged to a suit for title and possession. It is

specifically contended by the proposed defendants that the present suit is filed in collusion with an intention to deprive the rights of the title holder without making them as parties to the suit and it is further contended that on the date of execution of the agreement of sale said Sri.Mariyappa was not having any right to enter into agreement of sale in favour of the plaintiff as he has sold the entire extent of the suit schedule property by forming the sites in favour of the proposed defendants. In a suit for specific performance, it is essential that there is a valid and binding contract between the parties, and the proposed defendants have specifically contended that the subject agreement of sale is invalid document entered into between the plaintiff and Sri.Mariyappa fraudulently. The prior purchasers of the property are necessary parties only to the extent of ascertaining the validity of the agreement of sale. Hence, question of enlarging the scope of suit for specific performance would not arise.

- d. By referring to the various proceedings that have taken place between the parties referred supra and in the peculiar facts and circumstances of the case, the contesting respondents are proper and necessary parties in a suit.
- e. A necessary party is a person who ought to have been made a party to the suit or proceedings and in his absence no effective decree would have been passed and if necessary party is not impleaded in the suit, the suit itself is liable to be rejected. However, a proper party is a party though not a necessary party, however, his presence would enable the Court to completely and effectively adjudicate upon the lis pending before it, though he need not be a person against whom the decree is made. In the instant case, the contesting respondents may not be necessary parties but proper parties to the suit. The presence of proposed defendants would enable the Court to adjudicate the lis pending before it completely and will have complete facts and evidence before it, to arrive at a just and proper conclusion

with regard to grant of relief sought by the plaintiff. The relief sought by the plaintiff is being a discretionary relief, the trial Court is required to consider the various factors before passing appropriate orders in the suit.

- f. On perusal of the various Sections under Chapter III of the Specific Relief Act, 1963, it emerges that prayer for specific performance is discretionary one. The Court granting decree is required to look into various aspects as to whether Sri.Mariyappa was competent to execute the agreement of sale in favour of plaintiff, and the agreement of sale dated 10.06.2016 is a valid agreement as contend by the proposed defendants, hence the proposed defendants are proper parties to the suit. The party who seeks specific performance of the contract is required to satisfy all the requirements essential for seeking the relief in equity. Hence, the proposed defendants who have purchased the suit schedule property prior to the subject sale agreement are necessary parties to the suit.

- g. There cannot be any straight jacket formula for impleadment of the parties in the suit, it always depends on the facts and circumstances of the case on hand. This Court is conscious that the scope of suit for specific performance is very limited and it cannot be enlarged by allowing third party in to the suit proceedings. However, under the peculiar facts and circumstances and that too when a specific assertion is made by the proposed defendants that the agreement of sale is set up by the plaintiff and defendant Nos.1 to 8 only with an intention to overcome the registered sale deeds of the proposed defendants, the proposed defendants have specifically contended that the defendant Nos.1 to 8 are not contesting the suit by filing the written statement, the said aspect requires to be taken note of appropriately. The peculiar facts and circumstances of the case leads to an inference that the defence of the proposed defendants are necessary in the suit for specific performance filed by the plaintiff and for complete adjudication of lis.

- h. The impleadment of the proposed defendants in the suit would help/aid the trial Court as to whether it should exercise and grant discretionary relief in favour of the plaintiff or not. The plaintiff being the *dominus litus* is required to prove his case based on the pleading and evidence. Mere allowing the proposed defendants to come on record would not enlarge the scope of the suit. The proposed defendants would be allowed to come on record upon specific terms that the proposed defendants shall putforth their defence only to the extent of prayer sought in the suit and are not allowed to set up new prayer in the suit filed by the plaintiff. Hence, on the above terms the proposed defendants are permitted to come on record in the suit as defendant Nos.9 to 53.
- i. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Kasturi** supra and in the case of **Gurmit Singh Bhatia** referred supra, the said decisions has no application to the case on hand. In



the case of Kasturi as well as in the case of **Gurmit Singh Bhatia** the proposed parties were the subsequent purchasers of the property in question, however, in the instant case the proposed defendants are prior purchasers of the property. The proposed defendants are allowed to come on record upon specific terms that they shall put up their defence only to the extent of prayer sought in the suit and they are not allowed to enlarge the scope of specific performance to a suit for title or possession. It is always open for the proposed defendants to work out their remedies available in law if the subject suit is decreed against them.

**23.** For the aforementioned reasons, the writ petition is devoid of merits and the same is hereby ***dismissed***.

No order as to costs.

**Sd/-  
JUDGE**

BSR