THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.07.2014

\+ **FAO(OS) 202/2013 & CM Nos.6127/2013, 13451/2013 & 1/2014**

CHARANJEET SINGH REKHI ..... Appellant

versus

HARISH AHUJA & ORS. ..... Respondents

AND

\+ **FAO(OS) 212/2013 & CM No.6449/2013**

CHARANJEET SINGH REKHI ..... Appellant

versus

HARI MOHAN SHARMA & ORS. ..... Respondents

AND

\+ **FAO(OS) 235/2013 & CM No.7325/2013**

CHARANJEET SINGH REKHI & ORS. ..... Appellants

versus

CSR POULTRY RESEARCH & BREADING FARM & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellants : Ms Geeta Luthra, Sr. Advocate alongwith Mr Rajeev Kumar and Mr Harish Malik, in FAO(OS) 202/2013 & 212/2013.
Mr M. Qayam-Ud-Din in FAO(OS) 235/2013

For the Respondents : Mr Parag P. Tripathi, Sr. Advocate alongwith Ms Neelima Tripathi, for R-1.
Mr Anil Airi, Mr Hemant Manjani and Mr

Pratyush Sharma, for R-2 & 3 in FAO(OS) 202/2013

Mr Suhail Dutt, Sr. Advocate alongwith Mr Anil Kapur, for R-1 & 3
Mr Anil Airi, Mr Hemant Manjani and Mr Pratyush Sharma, for R-7 to 9.
Mr Parag P. Tripathi, Sr. Advocate alongwith Ms Neelima Tripathi, for R-11 in FAO(OS) 212/2013

Mr Anil Airi, Mr Hemant Manjani and Mr Pratyush Sharma, for R-1 to 3.
Mr Parag P. Tripathi, Sr. Advocate alongwith Ms Neelima Tripathi, for R-5
Mr Suhail Dutt, Sr. Advocate alongwith Mr Anil Kapur, for Mr Gajender Kumar and Mr Hari Mohan Sharma in FAO(OS) 235/2013

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These appeals have been filed by the appellants impugning a common order dated 05.03.2013, passed by a learned Single Judge of this Court in CS(OS) No.1511/1991 and CS(OS) No.2278/1993, whereby the learned Single Judge dismissed the following applications:-

a) I.A. No.3133/2011 filed in CS(OS) No.2278/1993 under Order 1 Rule 10 of CPC for impleadment by the appellant in FAO(OS) No.202/2013.

b) I.A. No. 2836/2011 filed in CS(OS) No.1511/1991 under Order 1 Rule 10 of CPC for impleadment by the appellant in FAO(OS) No.212/2013.

c) I.A. No.14464/2010 filed in CS(OS) No.1511/1991 under Order 1 Rule 10 of CPC for impleadment by the appellants in FAO(OS) No.235/2013, and

d) I.A. No.14465/2010 filed in CS(OS) No.2278/1993, for direction not to record the compromise, by the appellants in FAO(OS) No.235/2013.

2. As all the appeals impugn the common order and since, the substratal facts are similar, the same have been taken up together.

3. Briefly stated, Charanjit Singh Rekhi S/o Dr Nand Singh Rekhi (respondent no.2 in FAO(OS) No.235/2013) and his wife Manjit Kaur Rekhi (respondent no.3 in FAO(OS) No.235/2013) formed a partnership firm named as 'CSR Poultry Research & Breeding Farm' and owned two properties i.e., agricultural land with a poultry farm in Village Ghitorni, Mehrauli, New Delhi and a land at Village Narsinghpur, District Gurgaon, Haryana (hereinafter referred as the 'suit properties'). The suit properties were mortgaged to Punjab & Sind Bank (hereinafter referred as the 'Bank') and on non-payment of dues, the Bank filed a civil suit (CS(OS) No.463/1983) in this Court for recovery of the dues. On 05.02.1985, the said suit was decreed in favour of the bank and pursuant thereto, an Execution Petition No.32/1985 was filed by the bank for sale of the suit properties in order to recover its dues.

4. Thereafter, Hari Mohan Sharma, M/s Moti Board Industries Pvt. Ltd., Gajendra, Om Prakash Sharma, Manju Mishra, Inder Pratap Singh Akoi (respondent nos.6 to 11 respectively in FAO(OS) No.235/2013) filed a civil suit (CS(OS) No.1511/1991) alleging that Charanjit Singh Rekhi and his wife Manjit Kaur Rekhi had entered into an agreement dated 14.09.1990, through their son and attorney Jasjit Singh, for sale of the suit properties for a total consideration of ₹1,01,00,000/-. It was alleged that, in terms of the said agreement, respondent nos.6 to 11 paid a sum of ₹98,00,000/- to the Bank thereby satisfying the entire dues of respondents no. 2 & 3 towards the bank and the balance amount of ₹3,00,000/- was paid to respondent nos. 2 & 3. It was also alleged that, after receiving the entire sale consideration, respondent nos.2 & 3 terminated the agreement by a notice dated 29.01.1991. Consequently, respondents no. 6 to 11 filed a civil suit (CS(OS) No.1511/1991) claiming specific performance of the agreement dated 14.09.1990 executed in their favour.

5. During the pendency of the above mentioned suit, on 05.01.1991, Inder Pratap Singh transferred his interest in the suit properties in favor of M/s Moti Board Industries Pvt. Ltd. On 20.02.1992, Manju Mishra transferred her interest in the suit properties in favor of Gajendra. On 15.11.1994, Om Prakash Sharma transferred his interest in the suit properties in favor of Hari Mohan Sharma. On 14.04.1995, M/s Moti Board Industries Pvt. Ltd. transferred its interest in the suit properties in favor of Gajendra. Thus, respondents nos. 7, 9, 10 and 11 were left with no interest in the suit properties as their interests were transferred to nos.6 & 8.

6. Thereafter, a joint application (I.A. No.1452/1994) was filed under Order XXIII Rules 1 and 3 of CPC by the parties to the suit, for decreeing the suit in terms of a compromise arrived at between the parties to the suit. In terms of the said compromise, a further sum of ₹7,00,000/- was paid to respondent nos. 2 & 3 thereby increasing the total consideration amount for the suit properties to ₹1,08,00,000/-.

7. In the meanwhile, Harish Ahuja (respondent no.5) also filed a civil suit CS(OS) No.2278/1993 alleging that Charanjit Singh Rekhi and his wife Manjit Kaur Rekhi, through their GPA holder Kanwaljit Singh, had executed an Agreement to Sell, dated 27.04.1989, in favor of Harish Ahuja for sale of the suit properties i.e., Mehrauli land at the rate of ₹18,00,000 per acre and Narsimpur land at rate of ₹3,00,000 per acre. It was alleged that after receiving a sum of ₹2,10,000/- as part sale consideration, respondents no.2 & 3 purported to terminate the said agreement by their letter dated 26.09.1989. In consequence thereof, Harish Ahuja filed a civil suit on 05.10.1989, seeking specific performance of the agreement dated 27.04.1989.

8. Thereafter, the compromise application (I.A. No.1452/1994) was considered by a learned Single Judge of this court on 15.05.1998 and the court held as under:-

> "22. The application be retained on record as compromise between Sharmas and Rekhis that is plaintiffs and the defendants 1, 2 and 3 respectively. The effect thereof shall be taken into consideration by the court at the time of final judgment in the two suits."

9. On 09.08.2010, a joint application (I.A. No.10905/2010) was filed in CS(OS) No.1511/1991 under Order 23 Rule 1 & 3 of CPC by the respondent nos. 6 & 8 (Hari Mohan Sharma and Gajendra) and respondent no.5 (Harish Ahuja), praying for a decree in terms of the compromise arrived at between the parties. The said application is still pending and has not been disposed of. It is relevant to note that the learned counsel appearing for respondent nos. 2 & 3 submitted that Charanjit Singh Rekhi died on 10.10.2006 and as per order dated 27.03.2008, his son Jasjit Singh was brought on record being a legal heir of Charanjit Singh Rekhi. His wife Manjit Kaur Rekhi was already a party in the suit.

10. At this stage, two applications IA No.14464/2010 in CS(OS) No.1511/1991 (for impleadment) and IA No.14465/2010 in CS(OS) No.2278/1993 (for rejecting the compromise between the parties of two suits) were filed by some other persons claiming to be Charanjeet Singh S/o Nandi Singh and Manjit Kaur w/o Charanjeet Singh both resident of 41, Mohalla Itabba Village Itabba, PS Bazpur Distt. Udhamsingh Nagar, Uttrakhand). The said applicants are hereinafter referred to as 'Charanjeet Singh (CSR-1)' and 'Manjit Kaur (MKR-1)'. They claimed to be real owners of the suit properties and denied entering into any agreement to sell either with plaintiffs in CS(OS) No.1511/1991 or with plaintiff in CS(OS) No.2278/1993. It is submitted by the learned counsel for the said applicants that Manjeet Kaur (MKR-1) died on 11.11.2012 during the pendency of the application and Charanjeet Singh (CSR-1) is alive and actively pursued the said application.

11. Thereafter, two applications (IA No.2836/2011) for impleadment as a party in CS(OS) No.1511/1991 and I.A. No.3133/2011 for impleadment as a party in CS(OS) No.2278/1993 were filed by another person claiming to be Charanjeet Singh Rekhi S/o Nand Singh Rekhi R/o S-64, GK-I, New Delhi-18 and owner of the suit properties. The said applicant is hereinafter referred to as 'Charanjeet Singh (CSR-2)' and his wife is referred to as 'Manjit Kaur (MKR-2)'. It was submitted by the learned counsel for the said applicant that Charanjeet Singh (CSR-2), whom he represents, is alive, however his wife Manjeet Kaur (MKR-2) died in the year 2010 and therefore, the application was pursued only by Charanjeet Singh (CSR-2).

12. In the given circumstances, the learned Single Judge ordered an inquiry/investigation on 22.03.2011, to ascertain as to who was the real owner of the suit properties and directed an investigating officer to file a report. Pursuant to the said direction, investigation was carried out and an FIR (No.106/2011) was registered on 04.06.2011 and, subsequently, a charge-sheet was filed on 20.06.2012. Thereafter, Tej Pal Singh, ACP, EOW, Crime Branch (Investigating Officer), filed a status report, as well as a final report.

13. As per the status report dated 26.07.2012, the applicants in I.A. No.14464/2010 & I.A. No.14465/2010 (i.e. Charanjeet Singh, CSR-1 and Manjit Kaur, MKR-1) were found to be Charan Singh S/o Balwant Singh and Jamuna Kaur W/o Charan Singh both R/o Village Harsan, Tehsil Bazpur, District Udham Singh Nagar, Uttrakhand. Similarly, the applicant in I.A. No. 2836/2011 (i.e. Charanjeet Singh, CSR-2), was found to be Amritpal Singh S/o Kehar Singh R/o Village Ratia, District Fatehabad,

Haryana. The said Charan Singh and Amritpal Singh were arrested on 25.03.2012 and Jamuna Kaur is reported to be absconding. It was also stated that the witnesses and one seller, who are the signatories of the sale deed of the land of Village Narsinghpur, Gurgaon, Haryana, have confirmed from the certified copies of the sale deed that Charanjeet Singh Rekhi and Manjit Kaur Rekhi, whose photographs are available on record of case file are the real purchasers of the land which was sold by the owners of the property. Similarly, the legal heirs of the sellers of the land of Village Ghitorni, Mehrauli, Delhi have also identified the signatures of their father and uncle on the sale deeds through which the said land was sold to Charanjeet Singh Rekhi and Manjit Kaur Rekhi and have also identified the photographs of the purchasers, Charanjeet Singh Rekhi and Manjit Kaur Rekhi, available on the record of the case file. The said Charanjeet Singh Rekhi and Manjit Kaur Rekhi are those persons who are stated to have obtained a loan from State Bank of India, R.K Puram, New Delhi and Punjab & Sindh Bank, Green Park Extension, New Delhi against the mortgage of the suit properties.

14. Thereafter, the learned Single Judge dismissed the various applications for impleadment (being I.A. No.14464/2010, I.A. No.2836/2011, IA No. 14465/2010 and IA No. 3133/2011) by the impugned order dated 05.03.2013, whereby the Court held as under:-

> "15. However all of them agree that their impleadment in the present suit will necessarily entail adjudication in the present suit as to which Sh. Charanjit Singh Rekhi and Smt. Manjeet Kaur Rekhi are the genuine ones and which are not.

16. I am of the opinion that the aforesaid adjudication will be totally outside the ambit of the present suit which as aforesaid is only for specific performance of an Agreement of Sale of immovable property.

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18. The principle, that in a suit for specific performance, persons claiming adversely to the defendants are not a necessary or a proper party and ought not to be impleaded is a well settled one, reiterated by the Supreme Court recently in Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. MANU/SC/0192/2013. Even though the dispute in the present case is of the multiple identities of the defendants but I have no hesitation in holding the same principles to apply and the present suit cannot be converted into a suit for adjudication of which is the real Sh. Charanjit Singh Rekhi and Smt. Manjeet Kaur Rekhi.

19. It is always open to the applicants to, in a separate proceeding filed against Mr. Anil Airi's client, plead that they are not the persons who are the owners of the property subject matter of the suit and should not proceed to act with respect thereto and to seek appropriate orders."

15. Aggrieved by the dismissal of the applications, the appellants (Charanjeet Singh (CSR-2) in FAO(OS) 202/2013 & FAO(OS) 212/2013 and Charanjeet Singh (CSR-1) alongwith his son Daljeet Singh in FAO(OS) No. 235/2013) have challenged the common order dated 05.03.2013 in these three appeals.

16. It is relevant to note that one Jangir Singh had also filed an application (I.A. No.6487/2011) for impleadment in CS(OS) No.1511/1991 claiming that on 13.10.1983, Charanjeet Singh S/o Nandi Singh Rekhi then R/o S-64, Greater Kailash-I, New Delhi had executed a will in favour of

Jangir Singh for his share in the property situated at Gurgaon. It was alleged that the said Charanjeet Singh was presumed to be dead as he was not traceable for the past over seven years and therefore, Jangir Singh had initiated probate proceedings before the Gurgaon court and the same were pending. The said application (I.A. No.6487/2011) was also dismissed by the impugned order, however, Jangir Singh has not challenged the dismissal of the said application.

17. The learned counsel appearing for the appellants in FAO(OS) No.235/2013 (Charanjeet Singh, CSR-1 in I.A. No.14464/2010 and in I.A. No.14465/2010) contended that the applicants were the real Charanjit Singh Rekhi and Manjit Kaur Rekhi and were the genuine owners of the suit properties and therefore, they were the necessary and proper parties in the civil suit. It was submitted that respondent nos. 2 and 3 were imposters who were claiming title to the suit properties which belonged to the applicants. The applicants disputed the genuineness of the agreement and true identity of the parties and denied having entered into any agreements with respect to the suit properties. It was, therefore, contended that the applicants were necessary and proper parties and ought to have been impleaded in the suit. The learned counsel placed reliance on the decision of the Supreme Court in the case of ***Sumtibai & Ors. v. Paras Finance Co.*****: (2007) 10 SCC 82** and in the case of ***Thomson Press (India) Ltd. v. Nanak Builders & Investors Pvt. Ltd.*****: (2013) 5 SCC 397.** With regard to the application of Order 1 Rule 10(2) of CPC, the counsel has placed reliance on the decision of the Supreme Court in the case of ***Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd.*****: (2010) 7 SCC 417.**

18. It was contended by the learned counsel for the applicant (Charanjeet Singh, CSR-2) in I.A. No.2836/2011 and in I.A. No.3133/2011, that the applicant is the real Charanjit Singh Rekhi who owns the suit properties. It was stated that his wife Manjit Kaur Rekhi had expired in the year 2010 and therefore, the applicant was a necessary and proper party to be impleaded in the civil suits. It was also contended that the original title deeds of one of the suit properties, namely the property at Gurgaon, Haryana were in his possession, and the title deeds of the other immovable property at Mehrauli were mortgaged with State Bank of India, which have disappeared from that Bank. It was submitted that the title deeds, if any, deposited with Punjab and Sind Bank were not the genuine title deeds.

19. The learned counsel appearing for Harish Ahuja (plaintiff in CS(OS) No.2278/1993) contended that in a suit for specific performance of a contract, only the parties to the contract or persons claiming under them are necessary parties and persons claiming adversely to the vendor are not necessary parties. It was submitted that Section 19 of the Specific Relief Act, 1963 is exhaustive and only parties to the contract could be made parties to a suit for specific performance. It was contended that the scope of the suit filed by the plaintiff could not be enlarged at the behest of a stranger to the suit. It was submitted that the expression "all the questions involved in the suit", as used in order 1 Rule 10 (2) covers only such controversies as are raised between the parties to the suit. In the present case, all the applicants have denied executing any of the agreements to sell with the plaintiffs in the two suits and, therefore, the performance of the contract by the applicants is not the controversy/subject matter in the suit.

The applicants cannot be permitted to enlarge the scope of the suits and therefore cannot be impleaded as parties in the suit.

20. It was contended that a third party or a stranger to a suit cannot be added so as to convert the suit of one character into a suit of different character. In the present case, the suit was filed for the specific performance of the contract, and the same cannot be converted into a suit for declaration as to the real identity of the parties at the behest of a stranger to the suit. The plaintiff in suit is *dominus litis* and cannot be forced to add parties against whom he does not want to litigate. In support of these contentions, the counsel placed reliance on the judgments; ***Kasturi v. Iyyamperumal and Others*****: (2005) 6 SCC 733** and ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Others*****: (1992) 2 SCC 524.**

21. It was also contended that the original Rekhis were litigating from the point when they had mortgaged the suit properties with the Bank and have gone through various litigations for the past 27 years and no challenge was made as to the identity of parties at any stage. It was submitted that, as per the investigation and the status report filed by the police, all the three applicants (Charanjeet Singh, CSR-1; Manjit Kaur, MKR-1; Charanjeet Singh, CSR-2 and Jangir Singh) were found to be impersonators and an FIR No.106/2011 has also been registered against them. Therefore, all the three appeals merit dismissal.

22. We have heard the learned counsel for the parties at length.

23. The appellants have contested the proposition that in a suit for specific performance of a contract for sale of property, impleadment of a

person claiming a title adverse to that of the vendor is not necessary. However, there is abundant precedent supporting the view that where a person seeks to be impleaded as a party- defendant claiming an independent title to the suit property, it would not be necessary to implead the said person in a suit for specific performance of a contract for sale of the property. The Supreme Court in the case of ***Kasturi*** *(supra)* held as under:-

> "7. 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. 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."

24. The appellants have relied upon a decision of the Supreme Court in ***Sumtibai and Ors.*** *(supra)* wherein the Supreme Court had referred to various decisions including its earlier decision in ***Kasturi*** *(supra)* and held as under:

> "In view of the aforesaid decisions we are of the opinion that Kasturi case 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."

25. The facts in the case of ***Sumtibai and Ors.*** *(supra)* were clearly dissimilar from those in the case of ***Kasturi*** *(supra)*. In the case of ***Sumtibai and Ors.*** *(supra)*, the defendant expired and his legal heirs were brought on record. The legal heirs wanted to file an additional written Statement to plead that they also had interest in the Suit property. The application filed by the legal heirs under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC was rejected. It is in this context that the court held that a party has a right to take whatever plea he/she wants to take. It is thus settled that there cannot be an absolute proposition that in no circumstances can a person claiming title to the suit property be impleaded as a necessary or proper party to a suit for specific performance. The question whether a person is a necessary or a proper party to a suit would have to be decided in the given facts and circumstances of a case. It is relevant to note that the decision in the case of ***Kasturi*** *(supra)* has also been referred to by the Supreme Court in the case of ***Thomson Press (India) Ltd.*** *(supra)* which is a later decision.

26. The quintessential controversy in the present case is whether the aforesaid principle can be applied in a case of multiple identities. The controversy is not that the appellants are claiming an independent title adverse to all the original defendants (Charanjeet Singh Rekhi, respondent no. 2 & Manjit Kaur Rekhi, respondent no.3). The appellants are infact claiming to be the said defendants and/or their successors. The question that needs to be addressed is, whether it is necessary to determine a controversy as to the identity of a defendant in a suit for specific performance of a contract for sale of a property. In the present case while, it may not be in dispute that the persons claiming to be the defendants originally, had

entered into a contract the specific performance of which is sought to be enforced, however, the appellants have disputed that the contract has been entered into by Charanjeet Singh Rekhi & Manjit Kaur Rekhi (respondent nos. 2 & 3), as they are claiming to be those persons. And, have further asserted that the contract in question had not been entered into by them but by imposters.

27. The present appeals emanate from the dismissal of the applications filed by the appellants under Order 1 Rule 10 of the Code of Civil Procedure. Before proceeding further it would be necessary to refer to Order 1 Rule 10 of CPC, which reads as under:-

> "**10. Suit in name of wrong plaintiff.**— (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
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> (2) **Court may strike out or add parties**.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

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

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

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

28. A plain reading of Order 1 Rule 10(2) of CPC indicates that the Court has wide discretion to strike out the names of the parties which have been improperly joined and implead any person as a party whose presence may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The Supreme Court, in a number of decisions, has interpreted the provisions of Order 1 Rule 10 of CPC and held that it provides the Court with the necessary discretion to implead any person who is either a necessary or a proper party and whose presence is essential for the effective adjudication of the disputes involved in an action. In ***Thomson Press (India) Ltd.*** *(supra)*, the Supreme Court stated this proposition as under:-

"31. 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."

29. It is well settled that a necessary party is one in the absence of whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed but its presence is necessary for adjudication of the disputes involved in the suit. The Supreme Court in the case of ***Ramesh Hirachand Kundanmal*** *(supra)* has explained this in the following words:-

> "6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

30. The learned counsel for the respondents have relied upon the decision in the case of ***Ramesh Hirachand Kundanmal*** *(supra)* and have referred to paragraph 14 of the said judgment which reads 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 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. It is 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 so 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 a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd. [(1956) 1 All ER 273 : (1956) 1 QB 357]*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England[(1950) 2 All ER 605, 611]*, that their 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'.""

31. It is contended by the respondents that in view of the fact, that it is an admitted position that the appellants or persons through whom they are claiming their title had not executed the contract, the appellants cannot be impleaded as parties. It is submitted that for a person to be made a party to a suit, it is necessary that the person must be legally and directly interested in the action. Since, it is an admitted position that the appellants or their predecessors had not entered into the contract in question, they would not be necessary parties to the suits.

32. We are unable to accept this contention. It is settled law that in order to determine whether a person is a necessary party to an action, one of the tests that is to be applied is whether he should be bound by the result of the action. The Supreme Court in the case of ***Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*****: (2012) 8 SCC 384** has referred to various decisions and set down the broad principles which are applied while considering an application for impleadment. The relevant extract of the said judgment is 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:
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> 41.1. 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.
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> 41.2. 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.
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> 41.3. 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.
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> 41.4. 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.
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> 41.5. 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.

41.6. 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."

33. Applying the above tests to the facts of the present case the questions that need to be answered are, whether the presence of Charanjeet Singh Rekhi & Manjit Kaur Rekhi and all persons claiming through them are required for complete adjudication of the disputes and whether they would be bound by a decree that may be passed in the suits. In our view, the answers to these questions would have to be in the affirmative. The appellants are not claiming themselves to be parties other than the original defendants and in that sense the applications filed by them under Order 1 Rule 10(2) of CPC are not in substance seeking to be added as separate persons but only as a means to represent the original defendants. This distinction is vital and distinguishes the cases where a person seeks to be impleaded as a party to a suit for specific performance of a contract for sale of a property, by claiming to derive title to the suit property independent from the vendor.

34. The learned counsel for the respondents have referred to Section 19 of the Specific Relief Act, 1963 and have contended that in terms of the said provision it would not be necessary to implead the appellants in the suits filed in this Court. Section 19 of the Specific Relief Act, 1963 reads as under:-

"**19. Relief against parties and persons claiming under them by subsequent title.**- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

35. It is contended that the appellants are not parties to the contract and therefore, are not necessary parties in a suit for specific performance of the contract. In our view, treating the appellants as separate from Charanjeet Singh Rekhi & Manjit Kaur Rekhi would be an erroneous assumption as their application under Order 1 Rule 10(2) is premised on the basis that they are Charanjeet Singh Rekhi & Manjit Kaur Rekhi or are claiming through them. Indisputably, Charanjeet Singh Rekhi & Manjit Kaur Rekhi

are parties to the contract which is sought to be specifically enforced. The appellants may not have signed the contract but are claiming to be the persons who are named therein. In this situation, would it be open for the respondents to contend that the appellants who claim to be Charanjeet Singh Rekhi & Manjit Kaur Rekhi are not parties to the contract. We think not. The very assumption that the parties to the contract are persons other than the appellants or their predecessors is the controversy that has been raised by the appellants. The only question that thus arises is whether this controversy has to be decided in the present suits or whether the appellants are to be relegated to filing separate suit(s). It is obvious that this controversy would have to be settled in order that the controversy with regard to any agreement entered into by the Charanjeet Singh Rekhi & Manjit Kaur Rekhi can be decided. Thus, in our view, it would be apposite if this controversy is decided in the present suit in order that all the disputes in the present suit can be effectively adjudicated.

36. In view of the above discussions, we set aside the impugned order and remand the matter to the Single Judge.

37. After the orders in the present appeals were reserved, Respondent no.5 (Harish Ahuja) filed an application (CM No.1/2014 in FAO(OS) No.202/2013) seeking dismissal of FAO(OS) No.202/2013 as an abuse of process of Court. It is stated that after filing of the present appeal, a fresh Civil Suit CS(OS) No. 2355/2013 titled Dharmendra v. Harish Ahuja and Anr. was filed by the appellant in this Court through a Power of Attorney. The applicant further contended that relief in respect of the same properties which are subject matter of the present proceedings was sought. Thereafter,

an application was filed for withdrawal of the suit with liberty to re-file the same in case adverse orders are passed in FAO(OS) No.202/2013. It is further stated by the applicant that yet another suit relating to the suit properties has been filed by the appellant being civil suit, CS(OS) No.2357/2013, where the applicant has not been arrayed as a party. It is contended that the said action of appellant no. 2 in FAO(OS) No.202/2013 amounts to forum shopping. We are not inclined to entertain the present application as the same has been filed after the orders in the present appeals had been reserved. However, it would be open for the applicant to urge all contentions before the learned Single Judge.

38. We clarify that we have not examined any of the contentions raised by the learned counsel for the parties with respect to the bonafides of the appellant or the merits of their claim as the same had not been considered by the learned Single Judge. The learned counsel for the respondents has submitted that there has been a gross delay in filing the applications. It has been further pointed out that the investigations have revealed that the applicants are, in fact, imposters and in this view their applications before the Single Judge ought to have been dismissed on merits also. All contentions of the parties, except as considered herein, are open and the learned Single Judge shall proceed to decide the applications after hearing the parties.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

JULY 07, 2014/RK/MK