

GAHC010047032022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/48/2022

RONMI BORA
D/O- LATE RATUL BORA, PERMANENT RESIDENT OF HAPPY VILLA,
BOROWARI, GUWAHATI, DIST.- KAMRUP(M), ASSAM, PRESENTLY
RESIDING AT NEW CRYSTAL ROCK PG BUILDING, 101A, NO. L-151/A, 5TH
MAIN, 14 CROSS, SECTOR 6, HSR LAYOUT, NEAR CARS 24 SHOWROOM,
BANGALORE, PIN- 560102.

VERSUS

INCLITS CORE VENTURES PVT. LTD. AND ANR.
REGISTERED OFFICE AT BHARALUMUKH, GUWAHATI-781009,
REPRESENTED RAJIB BHARGAB AND SANDEEP BHAEGAV, SON OF LATE
KALYAN SARMA, R/O- BHARALUMUKH, GUWAHATI, DIST.- KAMRUP(M),
ASSAM

2:MINATI BORA
W/O- LATE RATUL BORA
R/O- HOUSE NO. 34
HAPPY VILLA
BAROWARI
GUWAHATI
DIST.- KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. D CHOUDHURY

Advocate for the Respondent : MR I UDDIN

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (ORAL)

Date : 26-04-2023

Heard Mr D Choudhury, learned counsel for the petitioner and Mr G Pathak, learned counsel for the respondents.

2. This is an application under Article 227 of the Constitution of India, filed by the petitioner against the impugned order dated 23.02.2022, passed by the learned Civil Judge No. 2, Kamrup(M), Guwahati in Misc (J) Case No. 367 of 2021, arising out of Title Suit No. 200/2021.

3. The brief facts of the case is that the petitioner is the daughter of Late Ratul Bora and Mrs Minati Bora, respondent No. 2 herein, in this case. The father of the petitioner, i.e. Ratul Bora was the absolute owner of a plot of land measuring 2 kathas 10 lechas covered by Dag No. 764 of KP Patta No. 507 of Revenue Village Sahar Guwahat Part VII, under Mouza Ulubari in the district of Kamrup (Metro). Ratul Bora expired on 17.04.2013 and after his expiry, the petitioner, her mother Minati Bora, and her brother, Rupam Bora became the absolute owners of the said property. It is pertinent to state herein that the petitioner is staying in Bangalore since 2018 in connection with her job and used to visit Guwahati occasionally.

4. After expiry of Ratul Bora, the respondent No.2, who is the mother of the petitioner, without the consent of the petitioner and in collusion with Rajib Bhargav and Sandeep Bhargav, Director of INCLITS CORE VENTURES Pvt. Ltd., mutated the aforesaid land in question in the name of the respondent No. 2, i.e. the mother of the petitioner. After

mutation, the respondent Nos. 1 and 2 entered into a Development Agreement as well as Irrevocable Power Of Attorney in connection with the said land.

5. Admittedly, the land in question is a joint property of the legal heirs of Late Ratul Bora and the same has not been partitioned between the legal heirs of Late Ratul Bora. It is further stated in the petition that in the development agreement dated 20.12.2019, it is mentioned that-“first party shall provide the second party with necessary clearance/affidavit from her son, Shri Rupam Bora and her daughter Miss Ronmi Bora, whenever necessary”, meaning thereby the respondent No. 1 had full knowledge about the fact that the petitioner is one of the legal heirs and co-owners of the land in question and knowing fully well, the respondent No. 1 entered into the agreement dated 20.12.2019 with the respondent No. 2.

6. After execution of the Development Agreement as well as the Power of Attorney, the respondent No. 2 applied for permission for construction before the concerned authority. The Guwahati Metropolitan Development Authority (GMDA) on 02.06.2020, issued permission for construction. Thereafter, on 18.02.2021, the counsel for the petitioner sent a legal notice to the Chief Executive Officer, GMDA, praying for cancellation of the permission dated 02.06.2020. When the petitioner raised her objection before the respondents, the respondents assured the petitioner that her interest will be protected. But the petitioner did not agree to give her share of land for development and construction of multi-storied building and demanded for cancellation of the Development Agreement as well as the Power of Attorney.

7. In the meantime, the respondent No. 1 preferred a Title Suit being T.S. No. 200/2021, before the Civil Judge No. 2, Kamrup (Metro), Guwahati, praying for specific performance of

the agreement executed by the respondent No. 2 with the respondent No. 1. The petitioner has not been made a party/defendant in the said suit. When the petitioner came to know about institution of the Title Suit No. 200/2021, the petitioner has preferred an application under Order 1 Rule 10 (2) of CPC, praying for her impleadment as well as her brother Rupam Bora in the said Title Suit i.e., T.S. No. 200/2021. The said application was registered as Misc (J) Case No. 367/2021. The respondent No. 1 has submitted his written objection to the said Misc (J) Case No. 367/2021, before the learned trial Court. In the said written objection, the respondent No. 1 has stated that –“....However, being a legal heir of Late Ratul Bora she has full right to implead herself as defendant No. 2 in this suit and the plaintiff has nothing to say against such impleadment, as they have stood as witness in the agreement.” The respondent No. 2 has filed no written objection in the Misc (J) Case No. 367 of 2021. After hearing both sides, vide order dated 23.02.2022, the learned trial Court has dismissed the prayer of the petitioner to be impleaded in the said suit on the ground that adding the petitioner as party to the suit would enlarge the ambit of adjudication of the suit and the suit will be converted from a suit for specific performance to a suit for determination of title by citing the case of ***Kasturi v. Iyyamperumal and others*** reported in ***(2005) 6 SCC 733***.

8. Being aggrieved by the said order dated 23.02.2022, passed by the learned trial Court in Misc (J) Case No. 367/2021, the petitioner has preferred this revision petition before this Court.

9. Learned counsel for the petitioner has argued that the petitioner is the legal heir of Late Ratul Bora, inasmuch, as she is the co-owner of the land in question and such fact has not been disputed by the respondents. In fact, knowing fully well the respondent No. 1 entered into the development agreement with the respondent No. 2. If the petitioner is not impleaded

in Title Suit No. 200/2021 and the suit is decreed in favour of the respondent No. 1, the petitioner will suffer irreparable loss and injury, inasmuch, as she will lose her right over the land. The learned trial Court has failed to appreciate such facts. As such, the order dated 23.02.2022, is liable to be set aside.

10. It is also the submission of the learned counsel for the petitioner that it is an admitted fact that the petitioner is the co-owner of the suit land and if the Title Suit No. 200/2021 is decided without hearing her, the right of the petitioner over the suit land will be affected and if any third party right is created, there will be multiplicity of litigations in future. It is also submitted that the learned trial Court has misinterpreted the law laid down in ***Kasturi (supra)***, as reflected in the order dated 23.02.2022, and also failed to apply his mind and passed the impugned order in a mechanical manner, which is liable to be set aside.

11. The learned counsel also cited two other case-laws.

1) Robin Ramjibhai Patel –Vs- Anandibai Rama @ Rajaram Pawar & Others; reported in 2018 15 SCC 614;

2) Sumtibai & Others –Vs- Paras Finance Company & Others; reported in (2007) 10 SCC 82.

12. On the other hand, learned counsel for the respondents contended that the petitioner is not a proper or necessary party in the suit being Title Suit No. 200/2021 that has been filed by the respondent No. 1 against the respondent No.2, for specific performance of an agreement entered into between the parties for development of the suit property. Hence, the order passed by the learned trial Court by holding the views of the Hon'ble Supreme Court in the case of ***Kasturi (supra)*** is just and proper and in accordance with law.

13. I have considered the submissions of the learned counsel for both the parties. I have also perused the order dated 23.02.2022, passed by the learned Civil Judge No. 2, Kamrup (Metro), Guwahati, in Misc (J) Case No. 367 of 2021.

14. In the backdrop of the matter, it is to be seen whether the petitioner is a necessary or a proper party in the Title Suit No. 200/2021. In the case of **Kasturi (supra)**, which has been relied upon by the learned trial Court, it has been clearly set out that in a suit for specific performance of contract, only the parties to the contract or parties claiming under them or a person who has purchased the contracted property from the vendor with or without notice of the contract are necessary parties. However, the person, who claims independent title and possession adversely to the title of the party is not a necessary party, since an effective decree can be passed in his absence, and no relief can be claimed against such party.

15. Yet another decision that has been relied upon by the learned counsel for the petitioner, i.e., **Sumtibai (supra)** , wherein it has been held that a person need not have any subsisting right or interest in the suit property for being impleaded as a defendant and that even a person who is likely to acquire an interest therein in future in appropriate cases is entitled to be impleaded as a party. But in the case of **Kasturi (supra)** it has been held that in a suit for specific performance of an agreement of sale of property, a stranger or a third party to a contract cannot be added as a defendant in the suit. While considering both the judgments, the Hon'ble Apex Court has held as follows:-

*“ 10. The learned counsel for the first respondent on the other hand submitted that the decision in **Sumtibai** is not good law in view of an earlier decision of a three-Judge Bench decision of this Court in **Kasturi (supra)**. In **Kasturi**, this Court*

*reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Referring to suits for specific performance, this Court in **Kasturi**, held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party. The first respondent contended that **Kasturi** held that a person claiming a title adverse to the title of defendant vendor, could not be impleaded, but the effect of Sumtibai would be that such a person could be impleaded; and that therefore, the decision in Sumtibai is contrary to the larger Bench decision in Kasturi.*

11. On a careful consideration, we find that there is no conflict between the two

*decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in **Sumtibai** itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in **Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay** (1992 (2) SCC 524) : (1992 AIR SCW 846) and **Anil Kumar Singh v. Shivnath Mishra** (1995 (3) SCC 147) : (1995 AIR SCW 1782) also explain in what circumstances persons may be added as parties. "*

16. In view of the aforesaid legal proposition, the Hon'ble Apex Court has thus held that a third party cannot be impleaded in a suit for specific performance if one has no semblance of title in the property in dispute. The Hon'ble Apex Court in the said decision also held that if a party claiming to be impleaded himself as a party if established a semblance of title over the suit property, he can be impleaded. Further it has been held that a person who has a direct interest in the subject matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 C.P.C.

17. Reverting to the case in hand, it is an admitted fact that the petitioner is the legal heir of the late Ratul Bora, who is the father of the petitioner and husband of respondent No. 2. After death of Late Ratul Bora, the petitioner and respondent No. 2., i.e., her mother and

brother, became the absolute owners of the suit property. The property has not been partitioned between the legal heirs. It is alleged by the petitioner that the entire land has been mutated in the name of her mother without her consent and her brother. The deed of agreement for development and subsequent power of attorney were executed between the respondent No. 1 and respondent No. 2. On repetition, as the petitioner is the legal heir of Late Ratul Bora, who was the original owner and after his death, she became the co-owner of the property in question, she has interest over the suit property.

18. Considering the overall circumstances, I am of the considered view that the order of the learned trial Court dated 23.02.2022, cannot be sustained in law and accordingly, the same is set aside. The learned trial Court is directed to implead the petitioner as defendant No. 2 in Title Suit No. 200 of 2021.

19. In the result, the revision petition is allowed. Stay order passed earlier, if any, stands vacated. There is no order as to cost(s).

20. The matter is disposed of accordingly.

JUDGE

Comparing Assistant