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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1338 of 2026

1 - Smt. Meera Devi Gupta W/o Sitaram Gupta Aged About 74 Years R/o Jawahar Para Ward No. 11 Vill. Podi Tahsil And Dist. - Balod C.G.

... **Petitioner(s)**

versus

1 - Rajnikant S/o Lt. Dharmkumar Dani (Agarwal) Aged About 65 Years Agriculture Vill. Podi, P. H. N. 12, R. N. M. Jhalmala, Tahsil And Dist. - Balod C.G. R/o Jainam Planet, Besides Aiims Hospital, Raipur C.G.

2 - Amardeep Gupta S/o Lt. Sitaram Gupta (Kalar) Aged About 43 Years Jawahar Para, Behind High School, Balod, Dist. Balod C.G.

3 - Vandana Gupta D/o Lt. Sitaram Gupta (Kalar) Aged About 43 Years Jawahar Para, Behind High School, Balod, Dist. Balod C.G.

4 - Sitaram Gupta (Kalar) S/o Namalum Gupta Aged About 80 Years Jawahar Para, Behind High School, Balod, Dist. Balod C.G.

5 - State Of Chhattisgarh Through Collector, Balod, Dist. Balod C.G.

... **Respondent(s)**

(Cause title taken from CIS)

For Petitioner(s) : Ms. Vedagni Jangde, Advocate

For Respondent(s) : Mr. Raj Kumar Sahu, Panel Lawyer

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

15.10.2026

- The present writ petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 10.08.2026 passed by learned Civil Judge, Senior Division, Balod in Civil Suit No.

11-A/2026, whereby the application filed by the petitioner under Order 1 Rule 10 of CPC has been rejected.

2. Learned counsel for the petitioner would submit that the respondent No. 1 is prosecuting a suit for redemption of mortgage and possession over the suit property before the learned trial Court in which the petitioner had not been made party-defendant. The defendants in that suit are the husband and children of the petitioner. The petitioner is the necessary party to the suit as an agreement was executed in favour of the petitioner on 10.02.1998 with respect to sale of the suit properties in her favour by the brother and sister of the plaintiff. In the year 2010-11, the partition of the family properties of plaintiff and thereafter, a sale deed was executed in favour of the defendants with respect to the properties which was the subject matter of agreement dated 10.02.1998. Subsequently, the plaintiff who is claiming to be the owner of the suit property on the basis of family partition, filed a suit for redemption of mortgage and possession, challenging the sale deed dated 17.12.202 saying that it was the mortgage deed and not the sale deed. In the suit the petitioner has filed an application for impleading herself as party-defendant for the reason that in the year 1998 an agreement was executed in her favour and the present defendants in whose favour the sale deed was executed are her husband and children. Since, the agreement was executed with respect to subject property in favour of the petitioner, he being the necessary party, shall be directed to impleaded in the suit as a party-defendant. He would further submit that the learned trial Court rejected the application of the petitioner holding that it is for the plaintiff to consider the necessary parties to be impleaded in the suit as provided under Order 1 Rule 1 of

CPC. She would also submit that a legal notice has also been served upon the plaintiff on 22.04.2025. She would further submit that no proper adjudication would be done, if the petitioner would not have been made as party-defendant and her right would be affected if ultimately the judgment passed in the suit without impleading the petitioner as party-defendant. Therefore, the impugned order may be set aside and she may be directed to be impleaded as party-defendant in the suit.

3. I have heard learned counsel for the petitioner and perused the material annexed with the petition.
4. The claim of the petitioner is that in the year 1998, an agreement was executed by brother and sister of the plaintiff with respect to the sale of subject land and therefore, she had interest over the subject property and even in the year 2025, a legal notice was also served upon her, thereby, she is claiming her right to be impleaded as a party-defendant in the suit.
5. From perusal of the plaint (Annexure-P/4), it transpires that the plaintiff has filed the suit with respect to the subject property for redemption of mortgage and possession and also for permanent injunction claiming that the plaintiff had borrowed an amount of Rs. 1,89,000/- from the defendant No. 3 and in lieu thereof, he got executed a nominal sale deed in favour of the defendant nos. 1 and 2. The sale deed was a nominal sale deed and title has not been transferred by such deed. The plaintiff had issued a legal notice to the defendants on 22.04.2025 for redemption of mortgage and for possession but it has not been replied and then the suit has been filed. It is nowhere mentioned in the pleadings of the plaint about any involvement of the petitioner or any agreement executed in her favour in the year 1998. The plaintiff is the

dominus litis of his suit and when a deed was executed in favour of the defendant No. 1 and 2 and the plaintiff is claiming redemption of mortgage and possession with the pleading that the said deed was in fact the nominal sale deed and no title has been passed in favour of the petitioner and claimed redemption of mortgage, no right can be claimed by the petitioner that she had also been made an a party-defendant in the suit as her claim that an agreement was executed in her favour in the year 1998 with respect to sale of subject land is an independent right which she is entitled to claim independently in accordance with law.

6. The Hon'ble Supreme Court in the case of ***Gurmit Singh Bhatia Vs. Kiran Kant Robinson & Others, (2020) 13 SCC 773***, has held that :-

5.2. An identical question came to be considered before this Court in *Kasturi v. Iyyamperumal* (2005)6 SCC 733 and applying the principle that the plaintiff is the *dominus litis*, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question as to who is a necessary party. The 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. It is further observed and held that in a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell.

It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.

6. Now so far as the reliance placed upon the decision of this Court in *Robin Ramjibhai Patel v. Anandibai rama* (2018) 15 SCC 614 and the decision of the Bombay High Court in *Shri Swastik Developers v. Saket Kumar Jain* 2013 SCC online Bom 897, relied upon by the learned Senior Advocate for the appellant is concerned, the aforesaid decisions shall not be applicable to the facts of the case on hand as in both the aforesaid cases, it was the plaintiff who submitted an application to implead the third parties/subsequent purchasers who claimed title under the vendor of the plaintiff. Position will be different when the plaintiff submits an application to implead the subsequent purchaser as a party and when the plaintiff (sic subsequent purchaser) opposes such an application for impleadment. This is the distinguishing feature in the aforesaid two decisions and in the decision of this Court in *Kasturi*.

7. From perusal of the impugned order passed by learned trial Court, it reveals that the learned trial Court has considered that the right of the

petitioner cannot be considered in the present case as has been filed by the plaintiff for redemption of mortgage and possession and she is neither the necessary nor the property party in the present suit.

8. Accordingly, under the facts and circumstances of the present case and in view of the aforesaid judgment passed by Hon'ble Supreme Court, we do not find any illegality or perversity in the order impugned passed by learned trial court, rejecting the application filed by the petitioner impleading herself to be the party-defendant.
9. Accordingly, the writ petition fails and hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

sagrika