

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14908 of 2015

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Yugeshwar Mandal S/o Late Sukhdeo Mandal R/o Khagaul Road, near
Shelson Liquor Pvt. Ltd., Saguna More, Danapur, P.O. Danapur Cantt., P.S.
Danapur, District Patna.

.... Petitioner/s

Versus

1. Parash Rai S/o Shri Ratan Rai Resident of Nayatola, Saguna More, PO
PS Danapur, District - Patna.
2. Sunita Devi W/o Sri Vishwa Mohan Resident of Village - Rajaur, P.O.
& P.S. Hathauri Ram Bahadurpur, District - Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 29-10-2015 Heard Mr. Gautam Kumar Kejriwal, the learned
counsel for the petitioner.

Calling in question the legal acceptability of the
impugned order by which the learned court below has rejected the
petition filed by the petitioner under Order 1 Rule 10 (2) C.P.C.
praying for his impleadment as party in the suit filed by the
respondent no. 1 against the respondent no. 2 seeking decree for
specific performance of contract, the present application under
Article 227 of the Constitution of India has been filed.

From the copy of the plaint of T.S. No. 06 of 2014
which is annexed as Annexure-1 to the present application, it is



evident that the respondent no. 1 has filed the said suit seeking a decree for specific performance of contract against the respondent no. 2 on the basis of the pleadings that the respondent no. 2 acquired by inheritance valid right, title, interest and possession over the suit property which was allotted in the share of her husband in amicable partition with his father (the present petitioner). It is further the case of the plaintiff-respondent no. 1 that after her husband became traceless, the respondent no. 2 entered into an agreement with the respondent no. 1 for sale of the suit property for Rs. 250000/- and after receiving Rs. 200000/- by way of advance out of the consideration money, the respondent no. 2 also executed the agreement for sale dated 13.12.2010 in favour of the plaintiff-respondent no. 1. It has been pleaded that as the defendant-respondent no. 2 avoided execution of the sale deed in favour of the plaintiff-respondent no. 1 in pursuance to the agreement for sale, the present suit has been filed for a decree for specific performance of contract for sale.

The present petitioner filed a petition on 05.06.2015 (Annexure-2) praying to implead him as party defendant no. 2 in the suit on the basis of assertion of his exclusive title over the suit property as his self acquired property and denying the status of the defendant-respondent no. 2 as wife of his son and further alleging



the collusion between the plaintiff-respondent no. 1 and defendant respondent no. 2 with intention to grab the suit property of the petitioner. It is manifest from the statement made in the petition (Annexure-2) that the present petitioner has specifically denied the title of the defendant-respondent no. 2 over the suit property and her right to execute the agreement for sale in favour of the plaintiff- respondent no. 1.

The learned court below after taking notice of the principle of law as laid down by the Apex Court in **Civil Appeal No. 2831 of 2005 Kasturi Devi Vs. Iyyamperumal (since reported in 2005 (6) SCC 733)** has held that the petitioner is not a necessary party to the suit and accordingly rejected the petition by the impugned order.

Mr. Gautam Kumar Kejriwal, the learned counsel for the petitioner has submitted that the learned court below has not considered the material facts and circumstances pleaded on behalf of the petitioner and has wrongly rejected the prayer of the petitioner for his impleadment as party in the suit on the basis of the decision by the Apex Court in Kasturi's case (supra). It has been contended that the principle laid down in Kasturi's case (supra) has been later on distinguished by the Apex Court in the case of **Sumtibai Vs. Paras Finance Co. 2007 (10) SCC 82**



where it has been ruled that a person having a fair semblance of title and interest in the property subject matter of suit for specific performance of contract can be impleaded as a party therein. It has also been canvassed by the learned counsel that the title of the petitioner over the suit property by purchase has been accepted by the respondents which is evident from the recitals in the agreement for sale and therefore the learned court below ought to have allowed the prayer of the petitioner to be impleaded as party defendant in the suit. The learned counsel has also relied on the decision of the Apex Court in the case of **Baluram Vs. P. Chellathangam 2015 (1) PLJR SC 316** in order to bolster his submission that even stranger to the contract can be impleaded as party in the suit for specific performance of contract.

After considering the facts of the case and the submissions on behalf of the petitioner, it is pellucid that the respondent no. 1 as plaintiff has filed T.S. No. 06 of 2014 seeking specific performance of contract on the basis of the agreement for sale executed by the defendant-respondent no. 2. In the plaint as well as in the copy of the deed of agreement for sale (as annexed with the writ application), it has been stated that the suit property was allotted to the share of the husband of the respondent no. 2 in partition with his father (the petitioner in the present writ



application) and the same was inherited by the respondent no. 2 after her husband became traceless. It is the case of the petitioner as pleaded in the petition filed by him for his impleadment as party in the suit, that the respondent no. 2 is not the wife of his son and thus she has no right, title and interest over the suit property. The petitioner has further claimed his exclusive title and possession over the suit property and has alleged that the respondent nos. 1 and 2 in order to grab the property of the petitioner has filed the suit intending to obtain the collusive decree.

The nature and scope of the right of a person who is stranger to the contract to seek his impleadment as a party in a suit for specific performance of contract came up for consideration by three Judge Bench of the Apex Court in Kasturi's case (supra) where it has been ruled as follows:-

“7.....In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) C.P.C. would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from



the vendor. 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....”

“11.....let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore,



for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all.

15.....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.....

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.....

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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 no. 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.....”

Much emphasis has been laid by the learned counsel for the petitioner on the decision in the case of Sumtibai (supra). In that case the question which directly arose for consideration before the Apex Court was the right of the substituted heir to file additional written statement in the suit. While deciding the said question their Lordships observed that “Kasturi’s case is clearly distinguished and 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. If she can show a fair semblance of title or interest he can certainly file an application for impleadment.” Their Lordships, however, have also taken into notice the principles as laid down in earlier decisions that the “ratio of any decision must be understood in the background of the facts of that case”

In the later decision in the case of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels (p) Limited, (2010) 7 SCC 417**, the Apex Court has taken into notice the decisions in Sumtibai (supra) and Kasturi (supra) and has observed as follows:-

“20.....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.

21. 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 learned counsel for the petitioner has also relied on the decision by the Apex Court in the case of Baluram (supra). The appellant in this case was the beneficiary of the trust and has questioned the order by which his prayer for impleadment as party in the suit filed for specific performance of contract for sale on the basis of agreement to sell executed by the trustee of the trust was rejected. Their Lordships after taking into notice at length the principles laid down in Mumbai International Airport (p) Ltd. (supra) has allowed the appeal, set aside the impugned order of

the high court and restored that of the trial court impleading the appellant as party defendant in the suit after holding that the appellant could not be held to be a stranger being beneficiary of the trust property. There is nothing in this judgment to support the contention on behalf of the petitioner that a stranger to the contract claiming his title adverse to the defendant-vendor can be impleaded as party defendant in the suit for specific performance of contract filed against the defendant.

Keeping in view the aforesaid dictum as laid down in Mumbai International Airport (p) Ltd. (supra), this Court finds that the facts in the case of Kasturi (supra) are almost similar to the facts of the present case and it would, be appropriate to apply the principles laid down in Kasturi case while considering the prayer of the petitioner. The learned court below has, therefore, rightly rejected the petition for impleadment filed by the petitioner relying upon the decision in Kasturi case and there is no illegality in the impugned order.

For the aforesaid reasons and discussions, this writ application is dismissed.

Devendra/-

(V. Nath, J)

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