

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.901 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/proposed 2nd defendant/3rd party is directed against the order dated 19.01.2015 of the learned Principal Senior Civil Judge, Kurnool passed in I.A.No.602 of 2014 in O.S.No.293 of 2009 filed by the 3rd party under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 requesting for permission for his impleadment as party 2nd defendant in the suit.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/proposed 2nd defendant ('the proposed 2nd defendant', for brevity) and the learned counsel appearing for the 1st respondent/plaintiff ('the plaintiff', for brevity). The 2nd respondent is the sole defendant in the suit. I have perused the material record.

3. To begin with, the core facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:- "The plaintiff brought the suit against the sole defendant/2nd respondent herein for specific performance of an agreement of sale dated 18.04.1989 in respect of Ac.2.76 cents of land in Sy.no.768/2 of Kallur village. The sole defendant is resisting the suit by filing a written statement. The proposed 2nd defendant filed the aforementioned application for his impleadment. That application was resisted by the plaintiff. On merits and by the order impugned in this revision, the trial Court dismissed the petition of the proposed 2nd defendant. Hence, the proposed 2nd defendant filed this revision petition."

4. The case of the proposed 2nd defendant in support of his request for his impleadment, in brief, is this: "He had purchased 10 house site plots bearing plot nos.17, 18, 19, 20, 21, 27, 28, 29, 30 and 31 admeasuring total

1416.66 Square Yards out of the total extent of Ac.2.13 cents in Sy.no.768/2 of Kallur village by virtue of a registered sale deed bearing document no.1036/2014 dated 05.03.2014 from its lawful owner, the defendant in the suit. Ever since the purchase of the plots, the proposed 2nd defendant is in peaceful possession and enjoyment of the said plots without any interruption or interference from anybody. The defendant had succeeded to the said land on the death of her husband on 09.09.2010. Pattadar passbook and title deed book were also issued to her vide patta no.570.

After the death of her husband, she had laid out the said Ac.2.13 cents of land into house plots and sold the plots to various purchasers. As already stated, the proposed 2nd defendant had purchased the aforementioned plots from the defendant under the above said sale deed and is continuing in possession and enjoyment of the said plots since the date of the said purchase. While so, the proposed 2nd defendant received a notice dated 04.07.2014 from the plaintiff wherein the plaintiff claimed right and title over the said land by fictitious and fabricated document. The plaintiff is trying to dispossess the proposed 2nd defendant by unlawful means though the plaintiff is aware of the purchase of the plots by the proposed 2nd defendant. The agreement of sale dated 18.04.1989 said to have to have been executed by the defendant in favour of the plaintiff is not valid as the same was executed during the life time of her husband and as she had no right, title and interest in the property during the lifetime of her husband. Therefore, the plaintiff has no right to either file the suit for specific performance or prosecute the suit. In order to contest the suit on this aspect and protect the rights of the proposed 2nd defendant, the petition is filed for permission for his impleadment and it is just and necessary to permit him to be impleaded as a party 2nd defendant. Else, manifest injustice would ensue and he would suffer irreparable loss.”

5. Per contra, the case of the plaintiff, in brief, is this: “The material allegations in the affidavit of the proposed 2nd defendant are all false. The purpose for which the 2nd defendant is to be impleaded as a party defendant

to the suit is not stated in his affidavit. The petition is filed without showing consequential amendments as required under Rule 28 of the Civil Rules of Practice. Therefore, the petition is liable for rejection. The proposed 2nd defendant alleges that he purchased certain plots on 05.03.2014 from the defendant. The said purchase is against law and is illegal as already the trial Court passed orders granting injunction against the defendant on 11.11.2010 in IA.no.1118 of 2010. It is false to allege that ever since the purchase allegedly made by the proposed 2nd defendant he is in possession and enjoyment of the alleged plots. The plaintiff is continuing in peaceful possession and enjoyment of the properties since 1989 and had also obtained the temporary injunction order in respect of the entire suit schedule properties. The allegations about issuance of pattadar passbooks and title deed books are not correct. The sole defendant had laid the property into plots and sold the plots to various purchasers is incorrect. All the transactions, if any, entered into are null and void, as all are aware of the actual physical possession and enjoyment of the plaintiff over the suit land. The contentions in the affidavit are meaningless and baseless. The proposed 2nd defendant purchased the plots at his own risk. Hence, he cannot be impleaded.”

6. The learned counsel for the proposed 2nd defendant while reiterating his pleaded case, which is already stated supra, would contend as follows:

“The proposed 2nd defendant is a *bona fide* purchaser of the plots covered by the suit schedule property for valuable consideration from the defendant, who is admittedly the original owner of the property. The plaintiff is deliberately denying the facts by saying that the defendant had not laid out the land into plots after the death of her husband. The husband of the defendant died in the year 2010. Thereafter her name was entered in the revenue records and she was given pattadar passbooks and title deed books. Having laid out the land into plots, she had sold the plots to several persons. The proposed 2nd defendant purchased some of the plots under a regular registered sale deed. The plaintiff had also issued a notice to this proposed 2nd defendant and on receiving of such notice only this proposed

2nd defendant came to know for the first time about the pendency of the suit. The purchase made by the proposed 2nd defendant is not in dispute. Therefore, the question to be decided in the suit is as to whether the alleged suit agreement of sale can be enforced despite the sale deed in favour of the proposed 2nd defendant executed by the defendant. If the proposed 2nd defendant is not permitted to be impleaded and the suit is decided in his absence, complex situations would arise as the proposed 2nd defendant is contending that he is in possession of the property since the date of his purchase whereas the plaintiff is also contending that by virtue of the agreement of the year 1989 the plaintiff is in possession of the entire extent of the property. In fact, since the defendant has laid out the property into plots and sold to various purchasers and as she is no longer interested in the property she is not diligently prosecuting her defence in the suit. If she is negligent in prosecuting her defence in the suit, the proposed 2nd defendant, who is an innocent and *bona fide* purchaser, would suffer serious and irreparable loss. The proposed 2nd defendant is also seriously disputing the alleged suit agreement of sale and the plaintiff's right to enforce it. The trial Court erroneously dismissed the petition without considering the legal position correctly. The trial Court erroneously held that a transferee *pendente lite* who had purchased the property without the permission of the Court would be bound by the ultimate decree that may be passed by the Court in the suit and that therefore, there is no necessity to implead the proposed 2nd defendant in the suit of the year 2009. In deed, this defendant is not aware of the suit till the plaintiff issued the notice in the year 2014. The fact that the plaintiff had issued a notice to this proposed 2nd defendant would itself show this proposed defendant's interest in the matter and his entitlement to be impleaded as a party 2nd defendant in the suit. There is no injunction not to alienate the property. There is only an injunction against the sole defendant not to interfere with the possession of the plaintiff. Since the 2nd defendant is a 3rd party and he is seeking impleadment he cannot suggest consequential amendments of the plaint.

In case the application for impleadment is allowed, it is for the plaintiff to amend the cause titles and then seek consequential amendments as per the settled practice and procedure established by law. The proposed 2nd defendant cannot state the consequential amendments as the plaintiff is the master of his suit and it is for the plaintiff to make consequential amendments with the permission of the Court and as directed by the Court. Therefore, in an application by a third party for his impleadment, no consequential amendment need be stated as per settled practice. The trial Court did not appreciate the legal position correctly. The trial court ought to have seen that the presence of the proposed 2nd defendant as a party defendant to the suit is essential for effective adjudication of the controversy and setting at rest the dispute once and for all.”

7. On the other hand, the learned counsel for the plaintiff while reiterating the case of the plaintiff and while supporting the orders of the Court below would contend that as rightly held by the Court below, the proposed 2nd defendant need not be impleaded in view of the provision of Section 52 of the Transfer of Property Act and in view of the further fact that the suit is one for specific performance and that in such a suit, the person who has executed the agreement is only a necessary party and that since the proposed defendant is not a party to the suit agreement of sale it cannot be said that without his presence the suit cannot be effectively disposed of.

8. I have bestowed my attention to the facts and the submissions. Dealing first with the aspect as to whether the proposed 2nd defendant need not be permitted to be impleaded as a party 2nd defendant to the suit in view of the provision of Section 52 of the Transfer of Property Act, it is necessary to refer to the legal position obtaining, which squarely applies to the facts of the case on hand.

8.1 The learned counsel for the proposed 2nd defendant placed reliance on the decisions in **Thomson Press (India) Limited v. Nanak Builders & Investors Pvt. Ltd.**^[1] and **Basant Kumar Soni v. Mukund Das Soni**^[2].

In **Basant Kumar Soni** (supra) this Court had referred to the decision of the Supreme Court in **Sumtibai and others v. Paras Finance Co.**^[3] and also **Kasturi v. Iyyamperumal**^[4].

In **Thomson Press (India) Ltd (1 supra)**, the question that fell for consideration is this:

“Whether the Appellant who is the transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the Defendants Sawhneys’.

It is trite to mention that the facts of the cited case disclose that after the institution of the suit, the counsel who had appeared for the defendants gave an undertaking not to transfer and alienate the suit property and that notwithstanding the order passed by the Court recording the undertaking given on behalf of the defendants and having full notice and knowledge of all these facts the sister concern of the appellant entered into series of transactions and finally the appellant M/s.Thomson Press got a sale deed executed in their favour by the defendants in respect of the suit property. Therefore, the alienation in that case was made in violation of an undertaking given to the Court and recorded by the Court.

Hon’ble Sri Justice M. Yusuf Eqbal, in his Lordship’s judgment rendered in the cited case finally held as under:

Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the Appellant is to be added as party-Defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

Before parting with the order, it is clarified that the Appellant after implement as party-Defendant shall be permitted to take all such defences which are available to the vendor Sawhneys’ as the Appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the Plaintiff and during the pendency of the suit.

Hon’ble Sri Justice T.S. Thakur, (as his Lordship then was) in his Lordship’s judgment rendered in the cited case held as under:

There is, therefore, little room for any doubt that the transfer of the suit property *pendete lite* is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in

the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer.

His Lordship having then referred to the ratio in the decision in **Khemchand Shanker Choudhary v. Vishnu Hari Patil** [(1983) 1 SCC 18], further held as under:

To the same effect is the decision of this Court in **Amit Kumar Shaw v. Farida Khatoon** (2005) 11 SCC 403 where this Court held that a transferor *pendente lite* may not even defend the title properly as he has no interest in the same or collude with the Plaintiff in which case the interest of the purchaser *pendente lite* will be ignored. To avoid such situations the transferee *pendente lite* can be added as a party Defendant to the case provided his interest is substantial and not just peripheral.

Finally, his Lordship referred to the decision in **Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiama Dass** [(1976) 1 SCC 103] and summed up the findings as follows:

- (1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.
- (2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.
- (3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.
- (4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants and none other.

However, in **Kasturi v. Iyyamperumal** (supra), the facts disclose that in a suit for specific performance of contract for sale an impleadment petition was filed for addition as party Defendants on the ground that the Petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the petitioners sought to be added as a necessary party in the suit. Rejecting

the petition it was held by a three Judges' Bench of the Supreme Court as under:

As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of contract for sale. For deciding the question who is a proper party in the 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.

In *Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru*^[5], 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, 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:

Since the Respondent is not a party to the agreement for 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.

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Be it noted that in Sumtibai case (3 supra), the Supreme Court having referred to the earlier decision in Kasturi (4 supra) held as follows:

“Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi v. Iyyamperumal and Ors.*: AIR2005SC2813. 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.”

8.2 Placing reliance on the above observations and findings in Sumtibai case (3 supra) it was sought to be contended on behalf of the proposed 2nd defendant that a person having semblance of interest or title is entitled to be impleaded as a party to a suit for specific performance, in appropriate cases. However, in Kasturi (4 supra) it has been held that in that suit for specific performance of contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. Be that as it may.

8.3 In **Mumbai International Air port Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. And others** ^[6] it was contended before the Supreme Court that the decision in Sumtibai case is not good law in view of an earlier three-Judge Bench decision of the Supreme Court in Kasturi case. The Supreme Court having considered the facts and the ratios in the said two decisions had held as follows:

“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 Corporation of Greater Bombay [1992 (2) SCC 524] and Anil Kumar Singh v. Shivnath Mishra [1995 (3) SCC 147] also explain in what circumstances persons may be added as parties.”

Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act

according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import*: 1981 (1) SCC 80 reiterated the classic definition of 'discretion' by Lord Mansfield in *R. v. Wilkes* 1770 (98) ER 327 that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

12.1) 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.

12.2) 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 in so far as the prayer for actual possession.

12.3) 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.

12.4) 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 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 vendor-defendant 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. 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.”

“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 and Sumtibai are with reference to the facts and circumstances of the respective cases. In Kasturi, 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, this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi 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.”

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) 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.

“The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. 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. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

8.4 Keeping in view the legal position that is summed up by the Supreme Court and having regard to the facts of the instant case the question involved in the present case has to be determined. Firstly, from a reading of the ratio in the recent decision in **Thomson Press** (supra), there is little room for any doubt that the transfer of the suit property *pendente lite* is not void *ab initio* and the purchase of any such party takes a bargain subject to the rights of the plaintiff in the pending suit and that since the proposed 2nd defendant in the instant case has purchased the part of the suit schedule property, that is, certain plots from out of the subject matter of the suit he is entitled to be impleaded as a party defendant to the suit. In the instant suit for specific performance, the proposed 2nd defendant who has purchased a part of the suit schedule property and who is claiming right, title and interest in the said property is seeking his impleadment as a party 2nd defendant inter alia contending that he had purchased the property which he is claiming from the defendant on the sole defendant succeeding to the said property on the death of her husband. It is contended on his behalf that the defendant having sold the property and having lost interest may not evince interest in the *lis* and diligently prosecute her defence and that if that is so, the proposed 2nd defendant who is a bona fide purchaser would suffer the consequences but not the sole defendant and that unless the proposed 2nd defendant is impleaded, he cannot raise and pursue the defences which are available to him and which are taken by the original defendant. If the suit comes to be decreed in the absence of the proposed 2nd defendant, who is claiming rights over part of the suit schedule property, it would be difficult for the proposed 2nd defendant to avoid any complexities that may arise or

that may be created in future or at the time of execution of the decree that may ultimately be passed in favour of the plaintiff against the defendant and that to give a quietus to the dispute once and for all and in one suit, it is just and necessary to implead the proposed 2nd defendant as otherwise it would lead to multiplicity of litigation. The law is well settled that the object of Order I Rule 10 of the Code is to bring before the Court at the one and the same time all the parties interested in dispute and finally determine all controversies once and for all in the presence of all parties without delay, inconvenience and expenses of the several actions, trials and inconclusive adjudication. Having regard to the facts peculiar to this case, this Court is of the opinion that the addition of the proposed 2nd defendant as party 2nd defendant to the suit is necessary for the purpose of resolving the controversy between the parties once and for all and to set at rest the controversy and that the refusal to grant the request for impleadment of the proposed 2nd defendant would only create needless complications at the stage of execution in the event of a decree being passed in favour of the plaintiff in the absence of the proposed 2nd defendant.

8.5 Before parting with the case, it is necessary to note that the law is well settled that when this Court is considering an application for permission for impleadment, this Court need not go into the merits of the contentions of the parties in regard to whether the proposed 2nd defendant is a *bona fide* purchaser or not. Further, this Court is in agreement with the submission of the learned counsel for the proposed 2nd defendant that since the proposed 2nd defendant is a third party and he is only seeking his impleadment as a party defendant he need not show in his application for impleadment any consequential amendments as it is for the plaintiff to seek the consequential amendments with the permission of the Court at an appropriate stage in case the proposed 2nd defendant is permitted to be impleaded as a party defendant to the suit.

9. In the considered view of this Court, the facts which are germane for consideration and the legal position applicable to the facts are overlooked

by the trial Court while dismissing the application of the proposed 2nd defendant. For the aforementioned reasons, this Court finds that the order impugned brooks interference.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.602 of 2014 in OS.no.293 of 2009 is allowed permitting the proposed 2nd defendant to come on record as a party 2nd defendant to the suit. The plaintiff shall carry out the necessary amendments to the cause titles in the first instance and then, if so advised and if necessary, file an appropriate application for consequential amendments as required under the facts and in law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M. SEETHARAMA MURTI, J

14th June, 2016

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[\[1\]](#) 2013(3) ALD 111

[\[2\]](#) 1020(4) ALD 490

[\[3\]](#) (2007) 10 SCC 82

[\[4\]](#) (2005) 6 SCC 733

[\[5\]](#) 1995 (3) SCC 147

[\[6\]](#) **AIR2010SC3109**