

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.4742 of 2015
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ORDER:

This revision under Article 227 of the Constitution of India by the unsuccessful petitioner/3rd party/proposed 3rd defendant is directed against the orders dated 21.08.2015 of the learned Junior Civil Judge, Vuyyuru passed in IA.no.231 of 2015 in OS.no.268 of 2013 filed by the 3rd party/proposed 3rd defendant under Order I Rule 10 of the Code of Civil Procedure, 1908 ('the Code', for short) requesting for permission to implead him as the party 3rd defendant in the suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/3rd party/proposed 3rd defendant ('the proposed 3rd defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff. Respondents 2 and 3 are the defendants. I have perused the material record.

3. The 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 defendants 1 and 2 for a perpetual injunction to restrain the defendants, their men, relatives and followers from ever interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property. The defendants 1 and 2 are resisting the suit. The proposed 3rd defendant filed the aforementioned application for his impleadment in that suit. That application was resisted by the plaintiff. On merits and by the order impugned in this revision, the trial Court had dismissed the petition of the proposed 3rd defendant. Hence, the proposed 3rd defendant had filed

this revision petition.

4. The case of the proposed 3rd defendant in support of the request for his impleadment as a party 3rd defendant to the suit, in brief, is as follows:

The plaintiff brought the suit against the defendants 1 and 2 for a perpetual injunction in respect of Ac.1.80 cents of wet land in R.S.no.18/1 and Ac.0.04 cents of wet land in R.S.no.17/3, that is, total Ac.1.84 cents situate in Veeravalli Mokhasa village more fully described in the common boundaries mentioned in the schedule annexed to the plaint. In fact the proposed 3rd defendant is the absolute owner of the plaint schedule property having purchased the same by way of a registered sale deed dated 09.09.2009 *vide* document bearing number 2686 of 2009 registered in the office of the Sub-Registrar, Vuyyuru. The proposed 3rd defendant purchased the property covered by the said sale deed from Koneru Vijay Kumar and the 1st defendant, being the GPA holder. Under the said sale deed, the possession of the property was delivered to the proposed 3rd defendant. The 1st defendant is no other than the father in law of the said vendor K. Vijay Kumar, the original owner of the plaint schedule property. By the time the possession of the property was delivered, the property was leased out to the 2nd defendant. Therefore, he is being continued as a cultivating tenant under the proposed 3rd defendant and he is paying maktha to the proposed 3rd defendant from 2010 onwards. The property is mutated in the name of the proposed 3rd defendant in the revenue records. He has been paying the land tax to the revenue authorities. The plaint schedule property is in his possession and enjoyment since the date of sale deed and the 2nd defendant is in physical possession and enjoyment as a cultivating tenant. While so, the plaintiff filed the suit alleging that the husband of

the plaintiff gifted the property in her favour under a registered gift deed dated 10.09.2007 and that she is the absolute owner of the plaint schedule property. As the proposed 3rd defendant has got right, title, interest and possession over the plaint schedule, he is a necessary party to the suit for adjudication of the dispute. His title deed is filed into Court. In a suit for perpetual injunction, the title to the property has to be looked into incidentally. There is sufficient evidence that the proposed 3rd defendant is in possession as stated since the date of sale deed executed by K. Vijay Kumar and the 1st defendant. As the title of the proposed 3rd defendant over the plaint schedule property is at stake in the suit filed by the plaintiff with a false claim, he is a necessary and proper party.

5. The plaintiff filed a counter *inter alia* contending as follows:

The material allegations in the affidavit filed in support of the petition of the proposed 3rd defendant are false. The plaintiff had acquired the plaint schedule property under a registered gift deed dated 10.09.2007; and, since then she has been in possession and enjoyment of the plaint schedule property. When the defendants 1 and 2 had tried to interfere with her peaceful possession and enjoyment of the plaint schedule property, she had filed the above suit in the year 2009 for a perpetual injunction to restrain them from interfering with her possession and enjoyment over the plaint schedule property. They had filed written statement with false allegations and their defence is based on false and fabricated documents. The proposed 3rd defendant is contending that he is in possession of the plaint schedule property through the cultivating tenant, that is, the 2nd defendant in the suit. In the CMA, the learned XI Additional District Judge, Gudivada while allowing the appeal had granted interim injunction against the defendants 1 and 2. The proposed 3rd party did not come up with his version at any time earlier and did not

make an attempt to get himself impleaded as a party defendant. He did not take steps for his impleadment even during the pendency of the CMA or CRP.no.2598 of 2014 filed by the defendants 1 and 2 before this court. The documents being relied upon by the proposed 3rd defendant are false and fabricated documents. In spite of injunction orders, the proposed 3rd defendant did not make a claim at the earliest opportunity before the trial Court. The injunction being claimed by the plaintiff against the defendants is a right in personum. If the proposed 3rd party apprehends threat of dispossession, it is for him to file a separate suit and he is at liberty to file a separate suit for declaration of title and other appropriate reliefs, but, he cannot seek his impleadment as a party to the suit of the plaintiff filed for permanent injunction against defendants 1 and 2. The revenue authorities issued pattadar passbook and title deed book in favour of the plaintiff. When the Tahasildar intended to make enquiries ignoring the pendency of the suit before the civil Court, the plaintiff got issued a legal notice dated 15.02.2011. The revenue authorities having knowledge of the suit proceedings are not entitled to issue pass books in favour of the proposed 3rd defendant and are also not entitled to receive the cist from him. Even otherwise, payment of land revenue does not confer any right much less title over the property. The proposed 3rd defendant who had kept quiet for long and who is watching the suit proceedings for the last more than 6 years cannot be permitted to be impleaded at a belated stage, that too, without paying necessary Court fee. He is not a necessary and proper party to the suit. The petition may be dismissed.

6. The learned counsel for the proposed 3rd defendant while reiterating his pleaded case would contend as follows:

The Court below ought to have seen that without having any semblance of title over the plaint schedule property, the plaintiff cannot

maintain a suit for perpetual injunction. The Court below ought to have seen that the plaintiff filed the suit claiming title basing on an alleged gift deed executed by her husband, who, in his turn, is claiming title over the property based on an alleged agreement of sale alleged to have been executed by the original owner of the property. The Court below ought to have seen that the proposed 3rd defendant is having title over the property by virtue of sale deed where under the original owner sold the property through his power of attorney holder, the 1st defendant herein. The husband of the plaintiff, who is an agreement holder, cannot acquire title over the property and consequently the alleged settlement deed alleged to have been executed by the husband of the plaintiff in favour of the plaintiff does not confer any right upon her to claim the relief of perpetual injunction in the suit. The Court below ought to have seen that the plaintiff's husband had no right to gift the property. The proposed 3rd defendant has got right, title and interest and also possession through the tenant having purchased the same under a registered sale deed from the original owner. The suit cannot be adjudicated without the presence of the proposed 3rd defendant. Without discussing the rival contentions of the parties and by a cryptic order, the court below had dismissed the petition. The order of the Court below is not supported by any reasons much less valid reasons. The Court below erroneously held that the plaintiff cannot be compelled to fight litigation against a party against whom the plaintiff has no grievance and that the nature of the suit does not empower the Court to allow the application of a third party and dismissed the petition erroneously without advertng to any other contentions of the parties and the legal position urged before it. The plaintiff having had knowledge of the title deed of the proposed 3rd defendant which was executed on 09.09.2009 brought the suit on 30.10.2009 against the defendants 1 and 2 without impleading the proposed 3rd defendant. The proposed 3rd defendant, on coming to know

about the pendency of the suit, had filed the application for his impleadment as he is having a document of title prior to the suit from the real owner whereas the plaintiff's husband is an agreement holder. The plaintiff's husband has no right to convey any title to his wife, the plaintiff, by executing a gift deed. The law is well settled that no one can convey a better title than what he has.

6.1 The learned counsel for the proposed 3rd defendant placed reliance on a decision of this Court in **Basant Kumar Soni v. Mukund Das Soni**^[1].

7. On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below would contend as follows:

The suit is filed for perpetual injunction by the plaintiff against the defendants when they tried to interfere with her lawful possession over the plaint schedule property. The plaintiff is claiming title to the property by virtue of a registered gift deed. The property is mutated in her name. She is paying the land revenue. In a CMA filed by her, the learned XI Additional District Judge while allowing the appeal and reversing the order of the trial Court and while dismissing the application for temporary injunction had granted a temporary injunction in favour of the plaintiff and against the defendants 1 and 2. In the revision petition filed by the defendants before this Court in CRP.no.2598 of 2014 a contention that the 1st defendant is the father in law of K. Vijaya Kumar and that the said K. Vijay Kumar executed a registered GPA in favour of the 1st defendant and that acting upon the same, the 1st defendant sold the suit schedule property to a third party by name Adusumilli Kanaka Durga Prasad, that is, the proposed 3rd defendant, was raised. This Court, having considered the said contention held as follows: - 'Though it is the case of the 1st defendant, being the General Power of Attorney holder of the

plaint schedule property, a copy of which has not seen the light of the day, has sold the said property to a third party, by name Sri Adusumilli Kandaka Durga Prasad, in view of the finding of facts recorded by the lower appellate Court, this Court cannot interfere with the impugned judgment dated 09.10.2012, exercising jurisdiction under Article 227 of the Constitution of India.’ In view of the said observation of this Court, the claim of the proposed 3rd defendant that he had purchased the plaint schedule property through the GPA holder of the real owner cannot be countenanced. The petition for impleadment is filed at a belated stage and cannot be entertained and allowed.

7.1 By producing the copies of the depositions of the witnesses that were recorded in the suit and by stating that the proposed 3rd defendant was examined on behalf of the defendants as DW3, the learned counsel for the plaintiff had vehemently opposed for addition of the proposed 3rd defendant in a suit for perpetual injunction.

8. In reply, the learned counsel for the proposed 3rd defendant had submitted as follows: “The Court below ought to have seen that the proposed 3rd defendant is claiming right, title, possession and interest and that when a party claims a semblance of right and interest in the property involved in the suit, he is a necessary party to the suit. The Court below ought to have seen that since the document of the proposed 3rd defendant is prior to the institution of the suit, it is in the interests of justice to grant the relief and permit him to espouse his cause in the present suit to avoid any complexities in future or at the time of the execution of the decree that may ultimately be passed in the suit. The Court below ought to have seen that if the proposed 3rd defendant is not impleaded, he would be put to serious and irreparable loss.”

9. I have given earnest consideration to the facts and the

submissions.

10. The question now for consideration is as to whether in a suit for perpetual injunction, the proposed 3rd defendant, in the facts and circumstances of the case, can be permitted to be impleaded as a party defendant.

10.1 In **Thomson Press (India) Limited v. Nanak Builders & Investors Pvt. Ltd.**^[2], 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’.

Though the purchase by the 3rd party to the suit in the cited case was made *pendente lite* and in violation of the undertaking recorded by the Court, the Supreme Court permitted such purchaser to be impleaded as a party to the suit.

10.2 I have gone through the decision of this Court in **Basant Kumar Soni** (1 supra). This Court in the cited decision had referred to the decisions of the Supreme Court in **Sumtibai and others v. Paras Finance Co.**^[3] and **Kasturi v. Iyyamperumal**^[4].

10.3 In **Kasturi** case the facts disclose that in a suit for specific performance of contract for sale an impleadment petition was filed for addition as party Defendant on the ground that the Petitioner was 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 Petitioner 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.

Be it noted that in Sumtibai case (3rd supra), the Supreme Court having referred to the earlier decision in Kasturi (4th 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.”

10.4 Placing reliance on the above observations and findings in Sumtibai case (3rd supra) it was sought to be contended on behalf of the proposed 3rd 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 (4th 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 it noted that the instant suit is a suit for perpetual injunction. Be that as it may.

10.5 In Mumbai International Air port Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. And others^[5] 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.”

10.6 Keeping in view the above said legal position that is summed up by the Supreme Court, the question involved in the present case has to be determined having regard to the facts of the instant case. In a suit for perpetual injunction, the proposed 3rd defendant is seeking his impleadment as a party 3rd defendant by claiming that he had purchased the property from the original owner under a regular registered sale deed even before the institution of the suit and that the plaintiff's husband was only an agreement holder and that he has no right and title and that, therefore, the Gift deed executed by him in favour of his wife, the plaintiff, does not confer any right, title and interest over the suit property on her and that the claim of possession of the plaintiff is false and that the proposed 3rd defendant was and is in possession through his tenant since the date of his purchase on 09.09.2009 and that the plaintiff

intentionally did not implead him in the suit to make a wrongful gain knowing fully well that he is the purchaser from the real owner and that he is in possession through his tenant. On one hand the plaintiff is claiming possession by virtue of a Gift deed executed in her favour by her husband. On the other, the proposed 3rd defendant, while claiming that he is in possession of the suit property through his tenant by virtue of a registered sale deed executed prior to the suit by the real owner through his Power attorney holder, is pointing out that the husband of the plaintiff is only an agreement holder and that the gift deed executed by him in favour of his wife does not convey any title or interest in the property to his wife, the plaintiff. In the light of the said submission he would submit that if the decree is obtained in his absence it would be difficult to avoid any complexities that may arise or that may be created in future or at the time of the execution of the decree that may ultimately be passed in the suit and that to give a quietus to the dispute once and for all in one suit it is just and necessary to implead him as 3rd defendant to the suit as otherwise it may 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 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 3rd defendant as the party 3rd defendant 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 3rd defendant would only create needless complications at the stage of the execution in the event of the plaintiff succeeding in the suit.

10.7 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 main contentions of the parties and need not deeply examine the same by looking into the evidence already recorded in the suit or by evaluating the facts pleaded and the evidence adduced. Further, since the proposed 3rd 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 the case the proposed 3rd defendant is permitted to be impleaded as a party defendant to the suit. Coming to the aspect as to whether the revision petitioner can be directed to be impleaded as a party to the suit, against the wish of the plaintiff, who is a dominant litigant, it is to be noted that in the decision in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others**^[6], the Supreme Court had held that a Court, in its discretion, can direct a plaintiff, though *dominus litis*, to implead a person as a necessary party, if the facts and circumstances of the case so warrant. This view is also fortified by the ratio in the decision in **Mumbai International Airport** (supra). Having regard to the discussion coupled with the reasons, this Court is satisfied that *prima facie* a case is made out that the revision petitioner is having *locus standi* and that he is also interested in this *lis* and that his presence as a party/defendant in the suit is necessary for effective adjudication of the suit.

10.8 In the considered view of this Court, the facts and the legal position applicable to the facts are overlooked by the trial Court while dismissing the application of the proposed 3rd defendant. For the aforesaid reasons, this Court finds that the order impugned brooks interference.

11. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.231 of 2015 in OS.no.268 of 2013 stands allowed. The plaintiff is directed to implead the proposed party as the 3rd defendant to the suit and make necessary consequential amendments to the plaint by following the procedure.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

4th July 2016

Note: Issue CC by 08.07.2016

(B/o)

Vjl

[\[1\]](#) 2010(4) ALD 490

[\[2\]](#) 2013(3) ALD 111

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

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

[\[5\]](#) AIR 2010 SC 3109

[\[6\]](#) (1992) 2 Supreme Court Cases 524