

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5046 of 2014

ORDER:

-

The unsuccessful 1st respondent/plaintiff brought this civil revision petition under Article 227 of the Constitution of India against the orders dated 01.12.2014 of the learned Principal Junior Civil Judge, Puttur of Chittoor District passed in I.A.no.232 of 2014 in O.S.no.246 of 2013 filed by the petitioner/3rd party/the 1st respondent herein under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 read with Rule 28 of Civil Rules of Practice to implead the said third party petitioner as 6th defendant in the suit he being a proper and necessary party.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the 1st respondent/3rd party/proposed 6th defendant. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

3.1 The case of the third party/proposed 6th defendant ('the proposed 6th defendant', for brevity) in support of his request for his impleadment as party 6th defendant to the suit, in brief, is this: 'He is the brother of the plaintiff. The defendants 1 and 2 in the suit are his vendors. Defendants 3 to 5 are no way concerned with the suit schedule property. The defendants 1 and 2 entered into an agreement of sale with this proposed 6th defendant in regard to Ac.0.65 cents in Sy.No.120/10 and another property on 29.11.2010 and received the sale consideration of Rs.1,00,000/- on the same day agreeing to execute a registered sale deed whenever demanded by him. The said facts are known to the plaintiff. The sale deed was also executed on 01.11.2013 by the defendants 1 and 2 in favour of the proposed 6th defendant as per the

terms of the agreement of sale. The defendants 1 and 2 handed over all the documents pertaining to the said property and another property to the proposed 6th defendant. The proposed 6th defendant discharged a loan of Rs.20,000/- due by the 1st defendant to the Society (Single Window), S.R.Puram. However, while typing the contents of the document/the sale deed dated 01.11.2013 executed in favour of the proposed 6th defendant, the total extent is mistakenly stated as Ac.0.25 cents instead of as Ac.0.65 cents. But, the boundaries are correctly mentioned in the schedule of the sale deed and the same cover the total extent of Ac.0.65 cents. Taking advantage of the said mistake in mentioning the extent in the said sale deed, the plaintiff who is well versed in conducting civil cases before the Courts had created the suit document in collusion with the defendants 1 and 2 and had filed the suit against the defendants 1 and 2 for specific performance to defeat the rights of the proposed 6th defendant over the suit property. The proposed 6th defendant had also issued legal notice dated 16.12.2013 to his vendors/the defendants 1 and 2 calling upon them to execute a rectification deed to rectify the mistake in regard to the extent mentioned in the sale deed. The defendants 1 and 2 received the said notice. Having come to know on 20.12.2013 from a villager that the plaintiff and the defendants are going to Court to request to place the matter before the Lok Adalat to get a collusive award over the suit property, the proposed 6th defendant had opposed for passing of the award before the Lok Adalat. Therefore, the matter was posted to 02.01.2014 before the Lok Adalat. As the first hearing of suit was fixed after a long date, the plaintiff and the defendants 1 and 2 in collusion had filed an application for advancing the hearing date and got the matter listed before the Lok Adalat; and, the said fact reveals the collusion between them. The plaintiff and the defendants having brought the suit are playing fraud upon the trial Court for getting a collusive decree to evade presentation of the pattadar passbook and the title deed book before the Sub Registrar Office, Karvetinagar. Hence, the proposed 6th defendant was obliged to file the petition for his impleadment as party 6th defendant to the suit.

3.2 The 1st defendant and the plaintiff filed detailed counters opposing for the impleadment of the said third party as a party 6th defendant to the suit.

They both had denied the averments in the affidavit filed by the proposed 6th defendant in support of his application for impleadment. It is *inter alia* contended in their respective defences that the agreement of sale dated 29.11.2012 being relied upon by the proposed 6th defendant is a created document for the purpose of the petition and that no such agreement of sale was referred to in the sale deed dated 01.11.2013, which was obtained by the proposed 6th defendant and that the proposed 6th defendant wants to knock away the 'B' schedule property and that the boundaries in the sale deed of the proposed 6th defendant and the boundaries of the suit schedule are different and that the sale deed of the proposed 6th defendant is in respect of Ac.0.25 cents only and that the extent being wrongly claimed by the proposed 6th defendant/third party is Ac.0.65 cents and that the proposed 6th defendant has no *locus standi* and that he is not a necessary and proper party in a suit for specific performance and therefore, the petition is liable for dismissal.

4. At the time of hearing before the trial Court, no oral evidence was adduced on either side. However, exhibits P1 to P5 and R1 to R9 were exhibited.

5. On merits and by the order impugned, the trial Court had allowed the petition and permitted the third party to be impleaded as party 6th defendant to the suit. Therefore, the aggrieved plaintiff had filed this revision.

6. At the hearing, the learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff had contended as follows: "The case of the proposed 6th defendant is false. He had obtained the sale deed for Ac.0.25 cents from the defendants 1 and 2. Though he contends that he had earlier entered into an agreement of sale in respect of Ac.0.65 cents and that in his sale deed the extent was mentioned as Ac.0.25 cents by mistake, there is admittedly no reference to such sale agreement in the sale deed dated

01.11.2013 executed by the defendants 1 and 2 in his favour. Thus, he had purchased only Ac.0.25 cents under his sale deed. The instant suit is filed by the present plaintiff against the defendants 1 and 2 for specific performance of an agreement of sale in respect of Ac.0.40 cents, which is not covered by the sale deed of the proposed 6th defendant. The extents of property covered by the suit schedule and the sale deed of the proposed 6th defendant as well as the boundaries of the said two extents of properties are different. The proposed 6th defendant has no *locus standi*. The agreement of sale, if any, is fabricated and is not true. Though the proposed 6th defendant had stated that he had issued a notice to the defendants 1 and 2 to execute a rectification deed for correction of the mistake in the extent mentioned in his sale deed, till date no such rectification deed is executed in his favour. The defendants are denying the claim of the proposed 6th defendant. The suit is filed by the plaintiff for specific performance of an agreement of sale executed by the defendants. The proposed 6th defendant is not a party to the suit agreement of sale. Since the proposed 6th defendant is not a party to the agreement of sale, he cannot be heard to say that dispute as to specific performance cannot be determined without his presence. As per the settled legal position, a third party cannot be and need not be added as a party defendant to the suit for specific performance as the suit for specific performance can be effectively adjudicated in the absence of a third party/proposed 6th defendant. If the third party/proposed 6th defendant is impleaded, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for declaration of title. Therefore, the proposed 6th defendant is not a necessary party. The trial Court without properly appreciating the facts and the legal position applicable had erroneously permitted the 6th defendant to be impleaded as party 6th defendant to the suit. The order is erroneous and is liable to be set aside.”

6.1 The learned counsel for the plaintiff had placed reliance on **Kasturi v. Iyyamperumal**^[1], **Mumbai International Airport Pvt. Ltd v. Regency**

Convention Centre & Hotels Pvt. Ltd.,^[2] and Matta @ Palina Bhavani v. Matta Tulasi Rao^[3].

6.2 *Per contra*, the learned counsel for the proposed 6th defendant while reiterating the case of the 6th defendant and while supporting the orders of the Court below would contend as follows:

The defendants having entered into an agreement of sale with the proposed 6th defendant had agreed to sell their entire Ac.0.65 cents of property. They had later executed the sale deed for the said entire extent.

However, in the registered sale deed, the extent is mentioned by mistake as Ac.0.25 cents instead of as Ac.0.65 cents though the boundaries in respect of the entire Ac.0.65 cents are correctly mentioned in the schedule of the documents. The law is well settled that boundaries prevail over the extent. In the circumstances, the proposed 6th defendant had already issued a notice to the defendants 1 and 2 to execute a rectification deed for correction of the mistake in regard to the wrong extent of Ac.0.25 cents mentioned in the sale deed. The plaintiff who is well versed with the court litigation and who is no other than the brother of the proposed 6th defendant had colluded with the defendants and brought the suit for specific performance for the remaining Ac.0.40 cents out of Ac.0.65 cents purely taking advantage of the mistake in regard to the extent in the sale deed of the proposed 6th defendant though the sale deed was executed in respect of entire Ac.0.65 cents by showing the boundaries for the said total extent and although the defendants 1 and 2 having sold the property to the proposed 6th defendant have no right to sell the very same property or a part of it to any person having lost their right, title and interest in the property. The law is well settled that no one can convey a better title than what he has. The defendants 1 and 2 having sold their extent of Ac.0.65 cents under a regular sale deed to the proposed 6th defendant cannot enter into any agreement of sale in respect of the property that was already sold. The suit is brought collusively to defeat the just claim of the proposed 6th defendant. Since the parties to the suit had already colluded

and made a request to the civil Court to refer the matter to the Lok Adalat for obtaining a collusive award, if the suit is to be disposed of, either by the civil Court or by the Lok Adalat, in the absence of the proposed 6th defendant, he would suffer serious and irreparable loss. Further, if any decree is granted eventually in the suit in the absence of the proposed 6th defendant, it would lead to complex situations and scramble for possession as the proposed 6th defendant is claiming that he is put in possession of the property by the defendants 1 and 2 under the sale deed. To avoid multiplicity of litigation and complexities that may arise if the suit is decreed in the absence of the proposed 6th defendant, it is just and necessary to direct the proposed 6th defendant to be added as a necessary party to the suit as his presence is necessary for effective adjudication of the controversy involved in the suit once and for all and in one litigation without driving the parties to multiple litigations involving unnecessary expenditure on several actions. The addition of the proposed 6th defendant is also necessary to avoid multiple trials and inconclusive adjudications.

7. I have given earnest consideration to the facts and the submissions. I have gone through the decisions cited.

8. It is profitable to first refer to the legal position obtaining.

8.1 In ***Kasturi v. Iyyamperumal and Ors.***(1 supra), 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 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 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.

In **Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru**^[4], 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.

-

In **Basant Kumar Soni v. Mukund Das Soni**^[5] this Court had referred to the decision of the Supreme Court in **Sumtibai and others v. Paras Finance Co.**^[6] and also **Kasturi v. Iyyamperumal** (1 supra).

In Sumtibai case (6th supra), the Supreme Court having referred to the earlier decision in Kasturi (1st 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.”

Be that as it may.

8.2 In **Mumbai International Air port Pvt. Ltd. Vs. Regency Covention Centre and Hotels Pvt. Ltd.** (2 supra), 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.”

In Thomson Press (India) Limited v. Nanak Builders & Investors Pvt.

Ltd., ^[7] 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 Shiamia 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.

8.3 Thus, the legal position that is summed up by the Supreme Court in the two latter decisions supports the case of the proposed 6th defendant. Firstly, from a reading of the ratio in the recent decision in **Thomson Press** (6th supra), there is little room for any doubt that the transfer of the suit property *pendente lite* is not void *ab initio* and the purchaser of any such party takes a bargain subject to the rights of the plaintiff in the pending suit. Indeed, the suit in Thomson Press (supra) is also a suit for specific performance. In the case on hand, the submission of the proposed 6th defendant is that he had purchased from the defendants 1 and 2 the total extent of Ac.0.65 cents under a regular

registered sale deed executed even before the suit and that the suit schedule property is only a part of the said entire extent of Ac.0.65 cents, which was already purchased by him under a regular registered sale deed. His further case is that the defendants 1 and 2 having sold the property and having lost title to the property have no right to execute any alleged agreement of sale in favour of the plaintiff and that therefore, the said agreement of sale is void and that no relief shall be granted in the suit on the basis of such an agreement of sale. On the basis of the said contentions, the proposed 6th defendant, who is claiming right, title and substantial interest in the suit property from the defendants 1 and 2 by virtue of purchase under a registered sale deed executed by them, is seeking his impleadment as a party 6th defendant. It is further contended on his behalf that the defendants 1 and 2 having colluded with the plaintiff are not inclined to contest the suit and their conduct shows that they want to have an award passed before the Lok Adalat detrimental to the rights of the proposed 6th defendant, who is a *bona fide* purchaser for valuable consideration, and that if the parties to the suit are allowed to collude, the proposed 6th defendant would suffer the consequences but not the defendants and that unless the proposed 6th defendant is permitted to be impleaded, he cannot raise and pursue the defences, which are available to him. It is also the submission that if the suit comes to be decreed in the absence of the proposed 6th defendant, who is claiming substantial rights over entire plaint schedule property, it would be difficult for the proposed 6th 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 defendants 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 6th defendant as otherwise it would lead to multiplicity of litigation. The only defence of the plaintiff and the 1st defendant is that the claim of the proposed 6th defendant that he purchased entire Ac.0.65 cents is false as his sale deed is in respect of Ac.0.25 cents and that the theory that there is an agreement of sale for the entire extent of Ac.0.65 cents is false as

there is no reference to such sale agreement in the sale deed of the proposed 6th defendant. *Ex facie*, the boundaries mentioned in the schedule of the sale deed of the 6th defendant do not show that on any side of that property, there is any remaining unsold extent of the defendants 1 and 2. At this stage, it is trite 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 and the Court has to only examine a *prima facie* case and find out as to whether sufficient case is made out for coming to a conclusion as to whether or not the proposed party is a necessary party and his presence is necessary for effective and conclusive adjudication of the controversy involved in the suit once and for all without driving the parties to multiple litigations. 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 6th defendant as party 6th defendant to the suit is necessary for the purpose of resolving the controversy between the parties once and for all and to give a quietus to the dispute and make the adjudication conclusive. In the well considered view of this Court, the refusal to grant the request for impleadment of the proposed 6th 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 6th defendant.

9. For the aforementioned reasons, this Court finds that the order of the Court below permitting the impleadment of the proposed 6th defendant as a party defendant to the suit is justified and that therefore, the order impugned brooks no interference.

10. Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending in this revisions shall stand closed.

M.SEETHARAMA MURTI, J

11th July, 2016
RAR

[\[1\]](#) (2005) 6 Supreme Court Cases 733
[\[2\]](#) 2010 (5) ALD 24 (SC)
[\[3\]](#) 2014 (5) ALD 733
[\[4\]](#) 1995 (3) SCC 147
[\[5\]](#) 1020(4) ALD 490
[\[6\]](#) (2007) 10 SCC 82
[\[7\]](#) 2013(3) ALD 111