

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.798 of 2009**

Manoj Kumar Shukla son of Late Chandra Shekhar Shukla,
aged 66 years, resident of Kamthi Line, Rajnandgaon

---- Petitioner

Versus

1. (a) Smt. Leelabai Kothari aged 72 years, w/o Phoolchand Kothari, resident of Ajad Chowk, Rajnandgaon (CG)
 - (b) Gautam Chand Kothari, aged 50 years s/o Phoolchand Kothari
 - (c) Smt. Kiran Lodha aged 54 years w/o Tarachand Lodha, D/o late Phoolchand Kothari, resident of Dondilohara Balod (CG)
 - (d) Smt. Manju Sethiya aged 48 years, w/o Abhay Sethiya, D/o Late Phoolchand Kothari, resident of care of Aditya Finance, Gujri Chowk Balaghat (M.P.)
 - (e) Smt. Suraj Jhabak aged 46 years, w/o Suresh Jhabak, D/o Late Phoolchand Kothari, resident of Suresh Textile, Malviya Road, Raipur (CG)
 - (f) Smt. Tara Kotadiya aged 44 years w/o Uttamchand Kotadiya, D/o Late Phoolchand Kothari, resident of B.N.K. Colony, Kondagaon, Bastar (CG)
2. Smt. Poonam Shukla, widow of Late Santosh Shukla, aged 35 years, Occupation-House-wife
 3. Ku. Dipti, daughter of Late Santosh Shukla, aged 14 years, Occupation-Student
 4. Ku. Richa, daughter of Late Santosh Shukla, aged 9 years, Occupation-Student
 5. Ku. Dipika, daughter of Late Santosh Shukla, aged 6 years, Occupation-Student
 6. Guruprasad, son of Late Santosh Shukla, aged 4 years,
- No.3 to 6 are minors through their natural guardian mother (respondent No.2 herein), residents of Besides Central Bank, Kamthi Line, Rajnandgaon

---- Respondents

For Petitioner	:	Mr.B.P.Sharma and Mr.Sameer Oraon, Advocates
For Res. No.1 (a) to (f)	:	Mr.Gagan Tiwari, Advocate
For Res.No.2 to 6	:	Mr.Ratan Pusty, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/06/2017

- 1.** The plaintiff/original respondent No.1-Phoolchand Kothari herein instituted a suit for specific performance of contract of the suit property on 26.12.2007 against defendant-Poonam Shukla and her minor son and daughters stating inter-alia that agreement to sale has been executed by defendant-Poonam Shukla on 27.12.2004 and she is not executing sale deed. During pendency of the civil suit, petitioner herein Manoj Kumar Shukla filed an application under Order 1 Rule 10 of the CPC that he is brother of husband of defendant No.1-Poonam Shukla and the suit property is joint family property in which he has a undivided share/interest and therefore, he is necessary party in the suit and therefore, he be impleaded as a party defendant in the suit, which was opposed by the plaintiff. The trial Court by its impugned order rejected the application finding that impleadment of the petitioner would convert the suit for specific performance of contract into suit for title and thereby rejected the application, feeling aggrieved against the said order, this writ petition under Article 227 of the Constitution of India has been filed.
- 2.** Mr.B.P.Sharma and Mr.Sameer Oraon, learned counsel appearing for the petitioner, would submit that the present petitioner having legal interest over the suit property is not only necessary but also proper party, therefore, the impugned order deserves to be set aside.

3. On the other hand, learned counsel appearing for respondents No.1(a) to (f) and respondents No.2 to 6 would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. It is alleged that agreement to sale of the suit property was entered into by defendant-Poonam Shukla in favour of plaintiff-Poolchand Kothari on 27.12.2004 and in the suit filed for specific performance of contract, the petitioner is claiming that the suit property is the joint family property in which he has a undivided interest, therefore, he is necessary and proper party in the suit and therefore, he be impleaded as party defendant in the suit.
6. Now the question for consideration would be whether in a suit for specific performance of contract for sale, the petitioner contending that he has a legal interest in the suit property can be made party to the suit.
7. The question is no longer res-intergra. Three Judges Bench of the Supreme Court in the matter of **Kasturi Vs. Iyyamperumal and others**¹ while considering Section 19 of the Specific Relief Act has held that person who claims independent title and possession adversely to title of vendor is not a necessary party in the suit. It was observed as

1 (2005) 6 SCC 733

under:-

“8. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :-

“19. (a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.”

8. Their Lordships further held that in the suit for specific performance of the contract for sale, enforceability of the contract entered into between the parties to the contract has to be examined and 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. It was further observed as under:-

“11. As noted hereinafter, 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 a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker Vs. Small*² made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

[Emphasis supplied]

9. The principle of law laid down in **Kasturi** (supra) has been

² (1834) 40 ER 848

followed with approval recently by the Supreme Court in the matter of Robin **Ramjibhai Patel Vs. Anandibai Rama and Ors.**³ by holding that a person claiming adverse to the claim of vendor is not a necessary party. It was observed as under:-

“7. As it appears from the aforesaid Paragraph this Court accepted the status of dominus litis of the Plaintiff and proceeded to hold that if the Plaintiff did not want to join the rival Claimants as Defendant in the pending Suit, the risk was totally of the Plaintiff and he cannot be forced to join them as party Defendant.

8. In the aforesaid context, this Court also considered the provisions of Order 1, Rule 10, Code of Civil Procedure, and in Paragraph 7 it expressed its view that the relevant provisions show that the necessary parties in a Suit for Specific Performance of a Contract for Sale are not only parties to the Contract or their Legal Representatives but also a person, who had purchased the contracted property from the vendor. It was further elaborated that “in equity as well as in law, the Contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the Contract, but a person, who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party”.

10. Similarly, in the matter of **Panna and another Vs. Jeevanlal and another**⁴ the Full Bench of the Madhya Pradesh High Court has answered the issue raised herein. The question referred to the Full Bench was whether in a suit for specific performance of a contract for sale, a third person intervenor, who contends that the suit property is a joint property of the applicant and he is also the co-owner of that

3 (2010) 7 SCC 417

4 1976 LJ 84

property, would be made a party (defendant).

- 11.** The Full Bench answering the question in negative has held that strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the co-owners of the contracted property are neither necessary nor proper party and are therefore, not entitled to be joined as parties to the suit. It was observed as under:-

“15. In the light of the aforesaid discussion we do not agree with the view taken by Krishnan, J. (as he then was) in *Roopkishore and others v. Tarabai and others* (supra). The learned Judge has based his view on the ground that if the person claiming adversely to the vendors are not joined as parties in the suit, there would be a problem of possession and therefore, in the interest of the purchaser plaintiff and to avoid the multiplicity of suits, he is a proper party. But, in our opinion these are not the valid considerations. If the plaintiff, even after notice of claim of title hostile to his vendor by an intervener, does not want to join the intervener, he takes the risk. He cannot be forced upon to join the intervener. We are in agreement with the view taken by Bhargava, J. (as he then was) in *Gananandrao v. Babulal and others* (supra) that in a suit for specific performance of a contract for sale in respect of a property against the defendant, some person who applies for being impleaded as a party to the suit on the ground that he has a right by birth in the suit property, cannot be joined as a party under Order 1, rule 10 of the Code, because if such a person was allowed to intervene in the suit as a party, the nature of the suit will change from a suit for specific performance of a contract to that of a suit for title. It has further been held that the proper course is to institute another suit for title, impleading parties to the suit in which the interveners had prayed for being joined as a party.”

- 12.** In the instant case, the petitioner being stranger to the contract claiming that he has a interest in the suit property/having right in the suit property is neither necessary

nor proper part in the light of principles of law laid down by Their Lordships of the Supreme Court and Full Bench of the Madhya Pradesh in the aforesaid cases (supra). If his impleadment is allowed, the suit for specific performance of contract would practically stand converted into suit for title, which is clearly impermissible in law.

13. As a fall out and consequence of the aforesaid discussion, it is held that learned District Judge is absolutely justified in rejecting the application filed by the petitioner under Order 1 Rule 10 of the CPC.

14. The writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s). The trial Court is directed to proceed further with the suit and conclude the hearing of suit expeditiously preferably within a period of six months from the date of receipt/production of copy of this order as the suit was instituted on 26.12.2007.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-