

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 683 OF 2014
IN
SUIT NO. 216 OF 2011**

1. M/s. Nestor Construction Pvt. Ltd.
Through its authorized Director
Shri Pravin Amidas Mehta
Aged 62 Years, Indian Inhabitant
having its officers at C-3, Rameshwar
Society, Opp. Khira Nagar, Santacruz (W)
Mumbai – 400 054.
2. Mr. Ayub Khan Jalil Khan
Age: 50 years,
Adult Indian Inhabitant,
Residing at Room No.1, Jalil Khan Compound
Malad (West), Mumbai – 400 064. ...Applicants/
Intervener

IN THE MATTER BETWEEN

1. Divyesh Construction Pvt. Ltd.,
A Company Incorporated Under the
Provisions of The Companies Act, 1956,
Havind its office at 101, Prathmesh Apt.,
86th Old College Road,
Opp. Portuguese Church, Dadar (West),
Mumbai – 400 028.
2. Heeralal Meghraj Doshi
of Mumbai, Aged 49 years, Indian Inhabitant,
Having his address at
At 101, Prathmesh Apt., 86th Old College Road,
Opp. Portuguese Church, Dadar (West),
Mumbai – 400 028 ... Plaintiffs

Versus

Virsen B. Solanki
Aged 45 years, Indian Inhabitant,
carrying on business in the firm and style of
M/s. Bombay Land Development Corporation
as the Sole Proprietor thereof,
having his place of business at
Raj Market, New Nagardas Road,
Andheri (East), Mumbai – 400 069. ... Defendant.

.....
H. Toor a/w Ms. Swati Sawant i/b S.K. Legal Associates for
Applicants/Intervenor.
Nikhil Karnawat a/w Harsh Behahy i/b Nivit Srivastava for
Respondents/original plaintiffs.
D.N. Kher O.S.D. from Court Receiver – present.

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CORAM : R. D. DHANUKA, J.

RESERVED ON : 23rd NOVEMBER, 2017.

PRONOUNCED ON : 08th DECEMBER, 2017.

JUDGMENT :

1. By this chamber summons, the applicants seek impleadment as parties defendant Nos. 2 and 3 in the suit filed by the plaintiffs, which is filed *inter-alia* praying for specific performance of the Memorandum of Understanding dated 28th April, 2006, for a declaration that the said Memorandum of Understanding is valid,

subsisting and binding between the plaintiffs and defendant and for further declaration that the purported termination dated 5th January 2011 is illegal, invalid and binding on the plaintiffs.

Some of the relevant facts for the purpose of deciding this chamber summons are as under;

2. On 28th April, 2006 the plaintiffs and defendant entered into the Memorandum of Understanding, by which, the defendant agreed to sell the suit property, described in Exhibit-“A” of the plaint. In the said suit, it was the case of the plaintiffs that the plaintiffs have made payment to the defendant of large amount and complied with their part of the obligation of the terms and conditions of the said Memorandum of Understanding. The defendant purported to terminate the said Memorandum of Understanding dated 28th April, 2006 by issuing Notice dated 5th January, 2011. On 27th January, 2011, the plaintiffs filed the suit bearing Suit No.216 of 2011 against the defendant for various reliefs summarised aforesaid. On 27th July, 2011 this Court appointed the Court Receiver, High Court, Bombay in respect of the suit property.

3. In the month of June 2014, the applicants filed this Chamber Summons inter-alia praying for impleadment as defendants No. 2 and 3, which is opposed by the plaintiffs by filing affidavit-in-reply. The applicants have filed affidavit-in-rejoinder to the said affidavit-in-reply.

4. Mr. Toor, learned Counsel for the applicants invited my attention to the documents annexed to the affidavit in support of the Chamber Summons, annexed to the affidavit-in-reply and also to the affidavit-in-rejoinder filed in the aforesaid Chamber Summons and various averments made in those affidavits. It is submitted by the learned Counsel for the applicants that the applicants jointly are concerned with the suit plot and are also the title holders thereof by virtue of documents executed with the duly registered with the owners and duly reflected in the record of rights. He submits that the defendant is claiming rights over the suit plot by virtue of agreement dated 28th January, 1979 executed with one of the legal heirs of late Jaikaran Pandey i. e. Mr. Ratansey Jaikaran Pandey. The plaintiffs are claiming rights over the suit plot by virtue of Memorandum of Understanding dated

28th April, 2006 executed between the plaintiffs and the defendant.

5. It is submitted that one of the legal heir Mr. Bhagelu Ratansey Pandel and others executed a registered Deed of Conveyance dated 19th October, 2004 and further Deed of Confirmation dated 1st October, 2005 in favour of M/s. Royal Associates, thereby transferring their 1/4th undivided share in favour of M/s. Royal Associates. It is submitted that M/s. Royal Associates entered into another registered Deed of Conveyance dated 10th July, 2002 with other legal heirs of the original owners i. e. Mr. Mewalal alias Mewakant Sidhanath Tiwari and Mr. Sewakant Sidhanath Tiwari and transferred 1/4th share, title and interest in the suit property. The said legal heirs also executed a Deed of Confirmation dated 1st September, 2005. Index-II was thereafter issued.

6. It is submitted that Mr. Radheshyam Pralhad Nayak, a partner of M/s. Royal Associates in his individual capacity as well as the applicant No.2 entered into registered Deed of Conveyance dated 10th November, 2006 with Baboolnath Jadunath Pandey and

purchased 1/4th undivided share, right and title in the said suit plot from the said legal heir. The Deed of Conveyance dated 10th November, 2006 is jointly executed by said M/s. Royal Associates and Applicant No.2. It is submitted that by virtue of three Deeds of Conveyance dated 10th July, 2002, 10th October, 2004 and 10th November, 2006 the said M/s. Royal Associates individually and jointly with the applicant No.2 purchased and conveyed share and interest of the several legal heirs of the suit plot. The applicant No.2 and M/s. Royal Associates, thereafter, approached applicant No.1 for Sale/Development of the suit plot. The applicant No.1 thereafter issued Public Notice on 4th October, 2007 and declared their intent to enter into agreement with the applicant No.2 and M/s. Royal Associates. No objection of any nature was raised by the defendant or the plaintiffs in response to the said public notice.

7. It is the case of the applicants that the applicant No.1 also did not find any record of execution of any documents/agreement between the parties while took search of the office the Registrar of Assurances. The applicant No.1, thereafter, entered into a Memorandum of Understanding dated 21st September, 2007 with

applicant No.2 and M/s. Royal Associates and agreed to purchase the suit plot on a total considerable price of Rs. 3,95,30,000/- and paid an earnest amount to the applicant No.2 and M/s. Royal Associates.

8. Learned Counsel for the applicants submits that the applicant No.1 is a bonafide purchaser of the suit plot and has entered into agreement with the applicant No.2 and M/s. Royal Associates after making all inquiries and after verification of the records in the office of Registrar of Assurances. He submits that the subject matter of the suit and the property purchased by the applicants is the same.

9. Learned Counsel for the applicants invited my attention to the prayers in the plaint and would submit that the plaintiffs have prayed for specific performance of the suit agreement and also for possession of the suit property, which is in possession of the applicants. He submits that if any decree for possession is passed by this court, it will affect the right, title and interest of the applicants. He submits that the possession of the applicants is not

disputed by the plaintiffs and the defendant in respect of the suit property.

10. Learned Counsel for the applicants placed reliance on the following judgments in support of his aforesaid submissions.

1. *AIR(30) 1943 Bombay 27 - Shivshankareppa M. Parakanhatti Vs. Shivappa Parappa Kuparti and others – Page No.29*
2. *AIR 1971 Gujarat 256 - Bai Devkabai and others Vs. Shah Shamji Mulji – Para Nos. 3 and 4.*
3. *AIR 1989 Kerala 167 - K.S. Abraham Vs. Mrs. Chandy Rosamma and others – Para Nos. 6, 8, 9, 10 and 11.*
4. *AIR 1994 Andhra Pradesh 50 – Adapa Venkateshwar Rao and another Vs. Mohammad Suleman and others – Para Nos. 4 and 5.*
5. *(2005) 6 SCC 733 – Kasturi Vs. Iyyamperumal and others.*
6. *(2007) 10 SCC 82 – Sumtibai and others Vs. Paras Finance Co. and others – Para Nos. 9 and 14.*
7. *(2010) 7 SCC 417 – Mumbai International Airport Pvt. Ltd., Vs. Regency Convention Centre and Hotels Pvt. Ltd. And others – Para Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 24.3, 24.4, 25, 26 and 27.*

11. Learned Counsel for the applicants submits that the judgment of the Supreme Court in case of Kasturi (supra) has been distinguished in the later judgment in the case of Sumtibai

and others (supra) and also in case of Mumbai International Airport Pvt. Ltd. (supra). He submits that even in a suit for specific performance of agreement third party can be impleaded as party defendant if such party has an interest and if such party claims right, title and interest in the suit property.

12. Learned Counsel for the plaintiffs on the other hand disputes the claim of the applicants that the applicants are in possession of the suit property. It is submitted by the learned Counsel that the plaintiffs have applied for specific performance in respect of the land bearing Survey No.4, Hissa No.2 bearing CTS No. 157, 157/B admeasuring about 1373.13 square yards equivalent to 1143 square meters, which is fully tenanted.

13. It is submitted that insofar as the alleged MOU dated 29th September, 2007 in favour of the applicant No.1 which is annexed to the affidavit in support of Chamber Summons is concerned the said alleged MOU is in respect of the land bearing Survey No. 46, Hissa No.21 bearing CTS No. 157 and 157/1 to 157/13 admeasuring 1148 square meters, which property was owned by one Mr. Jaikaran Pandey. He placed reliance upon various

documents annexed to the plaint including the MOU, the consent terms and the decree. The applicants are neither claiming through the plaintiffs nor the defendant in the present suit and are totally strangers to the suit and thus cannot be impleaded as parties to this suit *inter-alia* praying for specific performance of MOU and for other reliefs. The applicants are claiming independent title and possession of the suit property. He submits that the Court Receiver is in possession of the suit property appointed by this Court and not the applicants as alleged.

14. Learned counsel also placed reliance on the report submitted by the Court Receiver while taking possession of the suit property pursuant to order dated 27th July, 2011 passed by this Court and would submit that the said report does not disclose the name of the applicants to be found in possession of the suit property at the time of Court Receiver taking possession of the suit property. It is submitted that the applicants have not produced any document on record to show that the tenants in the suit property are not paying any rent to the applicants. The applicants have not filed any independent suit to protect their alleged possession or for claiming any independent rights in the suit property. He submits

that the applicants are neither necessary nor proper parties for adjudication of the dispute in the present suit. Impleadment of the applicants will result in changing the nature of the present suit from specific performance to suit for title and possession, which is impermissible in law and will also result in multiplicity of the proceedings and would lead to a complicated litigation which is totally outside the scope of the specific performance.

15. It is submitted by the learned Counsel for the plaintiffs that the applicants are allegedly claiming title in the suit property on the basis of alleged Deed of Conveyances which are not registered. Insofar as the judgment of the Supreme Court in the case of *Kasturi* (supra) sought to be distinguished by the learned Counsel for the applicants is concerned, the learned Counsel for the plaintiffs submits that the said judgment squarely applies to the facts of this case. He placed reliance on various paragraphs of the said judgment and more particularly paragraph Nos. 2 to 4, 6 to 11, 13 to 22 and 22. He submits that the Supreme Court has also considered the Section 19(c) of the Specific Relief Act, 1963 in paragraph Nos. 8 to 10 and has held that the said provisions are not applicable to the party seeking impleadment in a suit for

specific performance. He submits that the Supreme Court in the said judgment in the case of Kasturi (supra) had refused to grant impleadment to the applicants seeking independent title and possession in a suit for specific performance of the contract.

16. Learned Counsel for the plaintiffs also distinguished judgment of this Court in case of Mumbai International Airport Pvt. Ltd. (supra) relied upon by the learned Counsel for the applicants on the ground that the facts before the Supreme Court in the said judgment were totally different. The applicant in that matter was seeking impleadment as a party defendant to the suit on the basis that the vendor of the applicant and the plaintiff in the suit was common and the applicant was a subsequent purchaser during the pendancy in the said suit. It is submitted that the judgment of the Supreme Court in the case Kasturi (supra) has not been diluted by the Supreme Court in the case Mumbai International Airport Pvt. Ltd. (supra), but the views of the Supreme Court in the case of Kasturi (supra) are reiterated by the Supreme Court in the said judgment. He submits that the judgment has to be read considering the facts of that particular case.

17. Learned Counsel for the plaintiffs also distinguished the judgment of the Supreme Court in case of Sumtibai and others (supra) on the ground that the issue in the said judgment was pertaining to the filing of the additional written under Order 22 Rule 4(2), which is not the issue involved in this chamber summons. He placed reliance on para 3 to 5, 9, 10 and 14 of the said judgment and would submit that the said judgment will not apply even remotely to the facts of this case. In his alternate submission, it is submitted that the judgment of the Supreme Court in case of Kasturi (supra) was delivered by three Judges, whereas the judgment of Supreme Court in case of Mumbai International Airport Pvt. Ltd. (supra) and in case of Sumtibai (supra) have been delivered by two judges and thus, the ratio laid down in the judgment of Kasturi (supra) will prevail, which is squarely applicable to the facts of this case.

18. Insofar as the other four judgments i.e. in case of Shivshankareppa M. Parakanhatti (supra), Bai Devkabai and others (supra), K.S. Abraham (supra) and Adapa Venkateswar Rao and another (supra), relied upon by the applicants are concerned,

it is submitted by the learned Counsel for the plaintiffs that those judgments are not applicable to the facts of this case as the facts in those matters were totally different and in any event the views expressed by those courts being contrary to the judgments of the Supreme Court in case of Kasturi(supra) would not bind this Court.

19. Learned Counsel for the plaintiffs produced a photo showing the board of the Court Receiver, being in possession of the suit property. It is submitted that the applicants have pleaded knowledge of various decrees passed by this Court in respect of the suit property prior to the date of filing of the suit in various proceedings, which are not challenged by the applicants independently. The applicants are not concerned with the suit property in any manner whatsoever.

20. Mr. Toor, learned Counsel for the applicants in rejoinder submits that the city survey numbers of the properties are common. He submits that the applicants are bonafide purchaser of the suit property having three conveyances alongwith registered Deeds of Confirmations. The applicants are in possession of the

suit property as on today and had paid substantial amount of consideration in respect of the suit properties under various documents entered into between the owners of the properties and the applicants. It is submitted that if the applicants are impleaded as party defendants to the suit, the applicants would file counter claim in this suit and would claim various reliefs in respect of the suit property against the parties of the suit. He submits that the applicants were put in possession of the suit property in the year 2006.

21. It is submitted that even if, the Court Receiver came to be appointed by this Court, the Court Receiver took formal possession of the suit property and not physical possession. He submits that the name of the applicants are shown in the property cards in respect of the suit property. He submits that the applicants are thus necessary or at least proper parties for effective adjudication of the suit and to avoid multiplicity of proceedings. The consent terms relied upon by the plaintiffs are after the date of the applicants having placed in possession of the suit property.

22. A perusal of the plaint indicates that the suit has been filed by Divyesh Construction Private Limited and Heeralal Meghraj Doshi against Virsen B. Solanki, *inter-alia*, praying for specific performance of the MOU dated 28th April, 2006, for a declaration that the purported termination dated 5th January, 2011 is illegal, invalid and not binding on the plaintiffs and for further declaration that the suit agreement is valid, subsisting and binding between the plaintiffs and the defendant in respect of the suit property described at Exhibit-“A” to the plaint. It is not in dispute that in this suit, this Court has appointed the Court Receiver on 27th July, 2011. Insofar as the applicants are concerned, the applicants claimed their alleged right, title and interest in the suit property through applicant No.1 and M/s. Royal Associates under MOU dated 29th September, 2007.

23. A perusal of the report submitted by the Court Receiver indicates that the said report does not show the possession of the applicants of the suit property, though the Court Receiver was appointed much later than the date of alleged possession in respect of the suit property.

24. A perusal of the averments made in the affidavit in support of chamber summons and also affidavit-in-rejoinder and the documents annexed thereto indicates that the applicants are not claiming any right, title or interest in the suit property, either through the plaintiffs or the defendant. The applicants have not challenged the concerned decrees passed by this Court in respect of the suit property which are referred in the plaint. The applicants have also not filed any separate and independent suit for declaration of their alleged right, title and interest in the suit property or to protect their alleged possession. The suit is filed by the plaintiffs in the year 2011, whereas the chamber summons for seeking impleadment of the applicants as party defendants has been filed in the year 2014. The alleged possession of the applicants is seriously disputed by the plaintiffs in this chamber summons. The applicants could not demonstrate even prima-facie in this proceeding their alleged possession in respect of any portion of the suit property.

25. The submission of the learned Counsel for the applicants is that if the applicants are impleaded as party defendants to the

suit, applicants then would file counter claim for seeking appropriate reliefs against the parties to the said suit to avoid multiplicity of the proceedings. In my view, the alleged dispute in respect of the alleged title and possession raised by the applicants in respect of the suit property cannot be adjudicated upon by this Court in this suit *inter-alia* praying for specific performance of the suit agreement. The applicants are neither claiming through the plaintiffs, nor the defendant in the present suit in respect of the suit property. The applicants are claiming independent title and possession in the suit property.

26. The Supreme Court in case of Kasturi (*supra*) considered the issue as to whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract claiming for an independent title and possession over the contracted property is entitled to be added as party defendant in the said suit or not. The Supreme Court construed the provisions of Order 1 Rule 10(2) of the Civil Procedure Code, 1908 and has held that necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal

representatives as also a person who had purchased the contracted property from the vendor. 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.

27. The Supreme Court has laid down twin tests for impleadment of a person as party to the suit i.e. (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings and (2) no effective decree can be passed in the absence of such party. Supreme Court held that if a 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. For effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. It is held that it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in

order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. The Supreme Court considered in that matter that the applicants who had applied for their impleadment had not sought their impleadment on the strength of the contract in respect of which the suit for specific performance of the contract had been filed. They had based their claim on independent title and possession of the contracted property.

28. Considering such facts, the Supreme Court has held that if such applicants are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. The Supreme Court held that a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. In para 16 and 17 of the said judgment of the Supreme Court, it is held that court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the

plaintiffs on one hand and the applicants on the other hand and if the same is allowed, it would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. It is further held that it is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would be open to the court to decide the question of possession of third party or a stranger as first the *lis* to be decided is the enforceability of the contract entered into between the parties to the suit and thereafter the contract between a third party.

29. It is further held that the plaintiff who has filed a suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law. The Supreme Court in the said judgment also dealt with Section 19 of the Specific Relief Act, 1963, which is vehemently pressed in motion by the applicants and held that the persons seeking addition in the suit for specific performance of the contract for sale which were not claiming under the vendors, 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. It is further held that the said provision is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced. The applicants are claiming through some other parties and are claiming an independent right title and interest in the suit property and also claiming to be in possession which is seriously disputed by the plaintiffs.

30. In the facts of this case thus, even if the plaintiffs have prayed for possession of the suit property, the applicants would be neither necessary nor proper parties to a suit for specific performance. Alleged possession of the applicants is disputed by the plaintiffs. A suit for specific performance cannot be allowed to be converted into a suit for title of a stranger and for possession. I am not inclined to accept the submissions of the applicants that the applicants would file counter claim and would seek various reliefs against the plaintiffs and/or the defendant upon their impleadment as parties to the suit. If such a plea of the applicants is accepted by this court and if the strangers to the contract are allowed to be impleaded as party defendants to a suit for specific

performance, a suit for specific performance would be converted into a suit for title and possession, for adjudication of the alleged right, title and interest of stranger to the contracts which is subject matter of a suit for specific performance.

31. In my view, the applicants can file an independent suit for adjudication of their alleged right, title and interest in the suit property and for protection of their alleged possession. Even at the stage of execution of decree if passed in favour of the plaintiffs, and if applicants are found in possession of the suit property at that stage, the applicants being not a party to the suit would not be bound by such decree of possession and can always obstruct the said decree for possession. Admittedly, the applicants have not filed any independent suit for adjudication of the title in respect of the suit property which is asserted by the applicants in this chamber summons nor have filed any proceedings for protection of their alleged possession.

32. Insofar as, the judgment of the Supreme Court in case of Sumtibai and others (*supra*) vehemently relied upon by the learned Counsel for the applicants is concerned, it is not in dispute

that the said judgment is delivered by the two Judges of the Supreme Court, whereas the judgment of the Supreme Court in case of Kasturi (supra) is delivered by three Judges. Be that as it may, the Supreme Court in the said judgment in case of Sumtibai (supra) had considered the fact that the plaintiff had filed a suit against the party by name Kapoor Chand, for specific performance of the contract for sale. The said Kapoor Chand expired. The legal heirs of the said Kapoor Chand applied for their impleadment. The Supreme Court, *prima-facie*, took a view that the purchaser of the property in dispute was not only Kapoor Chand, but also his sons. The Supreme Court, accordingly, held that it cannot be said that the sons of Kapoor Chand had no semblance of title and mere busybodies or interlopers. Supreme Court distinguished the judgment in case of Kasturi (supra) and held that the said judgment will have no application where a third party shows some semblance of title or interest in the property in dispute. The Supreme Court clarified that the judgment in case of Kasturi (supra) 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.

33. The issue before the Supreme Court in the said judgment was pertaining to filing of additional written statement under Order 22 Rule 4(2). The legal heirs of late Kapoor Chand who were impleaded as parties had filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 of the Code of Civil Procedure, interalia, praying that they should be permitted to file additional written statement and also be allowed to take such pleas which were available to them. The said application was rejected. The Supreme Court was not considering the issue as to whether a stranger to a contract can be added as defendant in a suit for specific performance. In my view, the judgment of the Supreme Court in case of Sumtibai and others (supra) is clearly distinguishable in the facts of this case. The judgment has to be read considering the facts of their case. The judgment of Supreme Court in case of Sumtibai and others (supra) thus would not support the case of the applicants.

34. Insofar as the judgment of Supreme Court in case of Mumbai International Airport Pvt. Ltd. (supra) relied upon by the

applicants in support of the submissions that the principles of law laid down in case of Kasturi (supra) are diluted in the said judgment and the said judgment is distinguished is concerned, a perusal of the said judgment in case of Mumbai International Airport Pvt. Ltd. (supra) clearly indicates that the said judgment was also delivered by two Judges of the Supreme Court, whereas the judgment of the Supreme Court in case of Kasturi (supra) was delivered by three Judges. Be that as it may, the Supreme Court in the said judgment has held that if the principles relating to impleadment are kept in view, then the purported divergence in the judgment in case of Kasturi (supra) and Sumtibai and others (supra) will be found to be non existence. The observations in Kasturi (supra) and Sumtibai and others (supra) are with reference to the facts and circumstances of the respective cases.

35. The applicant before the Supreme Court in the said judgment was a subsequent purchaser of the suit property during the pendency of the suit for specific performance and was seeking impleadment on the basis that the venture of the applicant and the plaintiff in the said suit was common and the applicant was a subsequent purchaser of the said property during the pendency of

the suit. The Supreme Court held that a judgment has to be read considering the facts of their particular case. In my view, the facts before the Supreme Court in the said judgment Mumbai International Airport Pvt. Ltd. (supra) were totally different and are clearly distinguishable in the facts in this case and would not assist the case of the applicants.

36. Insofar as the judgment of Bombay High Court in case of Shivshankareppa M. Parakanhatti (supra) relied upon by the learned Counsel for the applicants is concerned, it is held by this Court that in a suit for specific performance the general rule is that a stranger to the contract cannot be sued upon it. Such general rule is subject to certain modifications. This Court considered an illustration that strangers are made parties as an exception to the rule in cases of novatio, in cases of an interest arising under a prior contract and in cases where it is desirable to avoid multiplicity of suits. The facts before this Court are totally different and would not assist in the case of the applicants.

37. Insofar as judgment in case of Bai Devkibai and others relied upon by the learned Counsel for the applicants is

concerned, the Gujarat High Court held that the general rule is subject to the recognised exceptions which are in conformity with the practice of the Court of Chancery. In cases where it is desirable to avoid multiplicity of suits and where interest of persons who are in actual possession of the property in question might be affected, strangers to the contract can be sued upon. The applicants in the matter were admittedly in possession of the suit property. In this case the alleged possession claimed by the applicants is seriously disputed by the plaintiffs. The facts before the Gujarat High Court were totally different and thus the said judgment is clearly distinguishable in the facts of this case and would not assist the case of the applicants.

38. Insofar as the judgment of the Kerala High Court in case of K. S. Abraham (*supra*) relied upon by the learned Counsel for the applicants is concerned, it is held that under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 the Court has been empowered to add party in a suit, if from the pleadings and other circumstances it is found that the parties interested in the subject matter of the litigation and without the impleadment of that party, issues cannot be finally and effectually be decided. In this

case, the applicants are neither claiming through the plaintiffs nor the defendant and thus cannot be impleaded as party defendants to the suit for specific performance. The applicants, *prima-facie* have to demonstrate before this Court that they are interested in the subject matter of the litigation and without their impleadment, the suit cannot be finally and effectually decided. The judgment of the Kerala High Court, thus, relied upon by the applicants, would not assist the case of the applicants.

39. Insofar as judgment of the Andhra Pradesh High Court in case of Adapa Venkateswar Rao and another (*supra*) is concerned, the Andhra Pradesh High Court had held that a situation may be that the defendants have sold away their property to the applicants and had lost interest in the suit proceedings. It was held that whether the subject matter of a litigation is a declaration as regards status or a legal character, the rule of presence or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy. In my view, the facts of the Andhra Pradesh High Court in the said judgment were totally different.

40. It is not the case of the applicants that the applicants have purchased the suit property either from the plaintiffs or the defendant before filing of the suit or during the pendency of the suit. The judgment of the Andhra Pradesh High Court is clearly distinguishable in the facts of this case and would not assist in the case of the applicants. In my view, the principles of law laid down by the Supreme Court in case of Kasturi (supra) are squarely applicable to the facts of this case and those principles are not diluted by the Supreme Court in case of Sumtibai (supra) or in case of Mumbai International Airport Pvt. Ltd. (supra) and are binding on this Court. I am respectfully bound by the said judgment. In my view, the applicants being neither necessary nor proper parties to the suit, cannot be impleaded as party defendants to the suit under Order 2 Rule 10 of the Code of Civil Procedure, 1908.

41. I pass the following order.

ORDER

Chamber Summons No. 683 of 2014 is dismissed with costs quantified at Rs.25,000/-, which shall be paid by the applicants to the plaintiffs within a period of two weeks from today.

(R. D. DHANUKA, J.)