THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.196 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is directed against the orders dated, 09.11.2016, of the learned Special Sessions Judge for trial of cases under SCs & STs (POA) Act, 1989-cum-VII Additional District & Sessions Judge, Ranga Reddy District, at L.B.Nagar, passed in I.A.No.110 of 2016 in O.S.No.797 of 2011 filed by the petitioner/proposed 2nd defendant under Order I Rule 10 of the Code of Civil Procedure, 1908, (hereinafter 'the Code'), requesting to permit him to be impleaded as party 2nd defendant to the suit.

2. I have heard the submissions of *Sri G.Sai Narayana Rao*, learned counsel for the revision petitioner/proposed 2nd defendant ('proposed 2nd defendant' for brevity), and of *Sri Venkateswar Varanasi*, learned counsel appearing for the plaintiff/respondent No.1 ('plaintiff' for brevity). I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows:

The 1st respondent/plaintiff filed the aforesaid suit against the defendant/2nd respondent herein for specific performance of a contract of sale, dated 29.09.2011. The defendant, having borrowed a sum of Rs.6,00,000/- as a personal loan from the proposed 2nd defendant, executed a mortgage deed, dated 03.12.2001, in favour of the proposed 2nd defendant, without disclosing about the existence of the above said contract of sale. The defendant stated in his written statement about the mortgage deed executed in favour of the proposed 2nd defendant and thus brought the said fact to the notice of the plaintiff. Yet, the plaintiff has not taken steps to implead the proposed 2nd defendant/petitioner herein as the 2nd defendant in the suit. Having come to know about the present suit, the proposed 2nd defendant filed the application in I.A.No.110 of 2016 seeking his impleadment as 2nd defendant in the above suit. The said petition was resisted by the plaintiff by filing a counter. On merits and by orders impugned in this revision, the trial Court dismissed the petition. Therefore, the aggrieved 2nd defendant is before this Court.

4. The case of the proposed 2nd defendant in support of his request for his impleadment in the suit as 2nd defendant, in brief, is this:

"The defendant approached him to arrange a loan of Rs.6,00,000/-. The said amount was lent to the defendant on 30.11.2011. The defendant executed the registered mortgage deed, dated 03.12.2011, mortgaging the Plot No.302, Sai Tirumala Nivas Apartments. However, the plaintiff and the defendant colluded with each other to evade payment of the money due to the proposed 2nd defendant under the said mortgage transaction. And, the plaintiff failed to implead the proposed defendant as party 2nd defendant to the suit despite having knowledge of the registered mortgage deed executed by the defendant in favour of the proposed 2nd defendant. Hence, the proposed 2nd defendant filed the petition seeking his impleadment as 2nd defendant to the suit."

5. *Per contra*, the case of the plaintiff, in brief, is this:

The plaintiff was not aware as to whether the defendant approached the proposed party and obtained a loan. But, through the written statement filed by the defendant, she came to know about the said mortgage transaction. The alleged loan was obtained by the defendant on 30.11.2011 and the mortgage deed bearing Document No.4793 of 2011 was executed and registered on 03.12.2011. However, the defendant executed the agreement of sale on 29.09.2011 in respect of the suit schedule property for a total consideration of Rs.26,00,000/-. On 29.09.2011, the defendant received from the plaintiff Rs.18,00,000/- towards part sale consideration and issued a receipt. The wife of the defendant also signed the said receipt as a witness. As per the conditions in the agreement of sale, the plaintiff paid to the defendant, the balance sale consideration of Rs.7,94,643/- through her account in the Federal Bank, Koti, by RTGS directly to the bank for clearing of Housing Loan of the defendant and paid the balance amount of Rs.5357/- in cash. For the said payment no receipt was obtained by the plaintiff as it is a small amount. Having promised to execute and register the sale deed in favour of the plaintiff the defendant failed to come to the sub-registrar's office, on 02.11.2011, and failed to register the sale deed. Having failed in all her efforts, the plaintiff lodged a complaint at L.B. Nagar P.S against the 1st defendant. On 12.11.2011, the plaintiff got published a public notice in Andhra Jyothi Daily newspaper. On 14.11.2011, the 1st defendant was remanded to judicial custody. On 30.11.2011, the plaintiff obtained *status quo* orders in the above suit and the *status quo* orders were served in the morning of 03.12.2011 at about 10 AM. The defendant, though had knowledge of the filing of the above suit and the orders of *status quo* granted by the Court, wantonly and intentionally executed the mortgage deed. After passing of the *stats quo* orders, the said mortgage deed was executed by the defendant with a *mala fide* intention to create complications. All the above proceedings are well within the knowledge of the proposed defendant even before the execution of the alleged mortgage deed. Inspite of the same, the above said mortgage transaction was created in collusion with the proposed defendant. The proposed party is a close relative and friend of the defendant and this fact is also known to the plaintiff. To help the defendant, the proposed party has deliberately entered into the alleged mortgage transaction and got the mortgage deed registered, on 03.12.2011. The proposed defendant's *mala fide* intention is only to drag on the suit, harass the plaintiff and cause mental torture and agony to her and prevent her from enjoying the fruits of the judgment and decree that may eventually be passed in her favour. The alleged simple mortgage transaction, dated 30.11.2011, and alleged mortgage deed that was allegedly registered, on 03.12.2011, are both subsequent to the passing of the orders of *status quo* and, therefore, the alleged mortgage transaction and the deed of 03.12.2011 which were brought into existence in violation of the orders of the Court below are not valid and binding on the plaintiff. The addition of proposed defendant, obviously, will change the entire nature of the suit and as such, the petition is liable to be dismissed with exemplary costs.

6. At the hearing, the learned counsel for the proposed 2nd defendant would submit as follows:

The learned Judge of the trial Court ought to have seen that the plaintiff had knowledge of the mortgage transaction between the defendant and the proposed 2nd defendant and also of the registered mortgage deed and the fact that the suit schedule property was mortgaged under the said deed executed in favour of the proposed 2nd defendant. The trial Court ought to have seen that all the said facts were brought to the knowledge of the plaintiff through the written statement filed in the suit by the defendant and that even there after, the plaintiff, who is having knowledge of the same, failed to implead the mortgagee as a party 2nd defendant to the suit, though the mortgagee is a necessary party. The trial Court failed to take note of the fact that the plaintiff failed to implead the proposed defendant only with an intention to defeat his rights and interests in collusion with the defendant. The learned Judge of the trial Court ought to have seen that the plaintiff and the defendant are close relatives and are colluding with each other to deny this proposed defendant's rights and interest in the suit schedule property. The learned Judge ought to have seen that the defendant mortgaged the suit schedule property by borrowing huge amount from this proposed defendant by suppressing earlier sale agreement and that in the fact and circumstances, if the proposed defendant is not brought on record as party defendant to the suit, he will be put to hardship. The Court below ought to have seen that the defendant in collusion with the plaintiff is not properly prosecuting the suit and as such, the proposed defendant is a necessary party to the suit. The learned Judge ought to have seen that the proposed defendant had no prior knowledge of the suit agreement of sale between the plaintiff and the defendant and the pendency of the suit at the time of execution of the mortgage deed. If the proposed party is not permitted to impleaded as 2nd defendant to the suit, his interests will be defeated and he suffers irreparable loss. The Court below ought to have seen that the proposed 2nd defendant is a necessary and proper party to the suit and that his presence is necessary for effective adjudication. Therefore, the trial Court ought to have allowed the petition of the proposed defendant instead of dismissing the same.

7. The learned counsel for the plaintiff while supporting the orders of the Court below submitted that the mortgage transaction and the registered mortgage deed entered into between the defendant and the proposed defendant are both subsequent to the suit contract of sale and that the same were collusively brought into existence by the defendant and proposed defendant, who are relatives, after having knowledge of the orders of the trial Court and that the transactions are *mala fide* and that the request of the proposed defendant is not *bona fide* and that the proposed defendant is not entitled to be impleaded in the suit for specific performance and that the executant of the agreement is the only necessary party to the suit and that the Court below is justified in dismissing the petition filed by the proposed defendant for his impleadment as party defendant to the suit.

8. I have bestowed my attention to the facts and submissions.

9. Admittedly, the suit is filed for specific performance of a contract of sale, dated 29.09.2011. The mortgage transaction was said to have been entered into between the defendant and the proposed defendant on 30.11.2011 and the registered mortgage deed was executed, on 03.12.2011. Thus, the agreement of sale was prior in point of time having been executed on 29.09.2011. The proposed 2nd defendant submits that he is not made aware of the suit contract of sale between the plaintiff and the defendant and that he had no knowledge of the suit by the dates of the mortgage transaction and the execution of the registered mortgage deed and that the defendant without disclosing the said facts borrowed huge amount from the proposed defendant and mortgaged the suit schedule property in favour of the proposed defendant and that in the facts and circumstances stated, he is a necessary and proper party as he has acquired right, title and interest in the suit schedule property'. In his written statement the defendant mentioned about the aforestated mortgage transaction. Yet, the plaintiff failed to take steps for impleading the mortgagee as a party defendant to the suit. Therefore, the mortgagee filed the petition for his impleadment as 2nd defendant to the suit.

10. The trial Court in the orders impugned, observed as follows:

> "In the instant case, the petitioner is not a party to Ex.A1 agreement of sale, dated 29-9-2011. The suit is filed by the plaintiff for specific performance of agreement of sale against the defendant in the suit. The petitioner is a stranger to the suit. The petitioner mortgaged the property with the defendant, on 30.11.2011 much subsequent to Ex.A1 agreement of sale, dated 29.9.2011 between the parties to the suit. In view of the reason and the above mentioned citations, the petitioner cannot be permitted to be added as defendant no.2 in the suit."
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> (Reproduced verbatim)

Thus, the Court below having noted that the defendant mortgaged the property with the proposed defendant, on 30.11.2011, much subsequent to execution of exhibit A1, agreement of sale, dated 29.09.2011, between the parties to the suit, proceeded to dismiss the application filed by the petitioner seeking his impleadment as party 2nd defendant.

11. In this back drop, it is necessary to refer to the provision of Order 1 Rule 10 of the Code, which reads as under:

> "10. Suit in name of wrong plaintiff— (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
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> (2) Court may strike out or add parties.—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.
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> (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
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> (4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copes of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
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> (5) Subject to the provisions of the [116] Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

A plain reading of the above provision shows that the Court has got jurisdiction and discretion to add a party at any stage of the proceeding either upon or without application of either of the parties to the suit in case the Court is of the opinion that the presence of such party before the Court may be necessary in order to enable the Court to effectively and completely adjudicate the *lis* and settle all questions involved in the *lis*. The sub-rule (4) of the said rule also ordains that where a defendant is added, the plaint shall be consequently amended.

12. Before proceeding further it is necessary to refer to the legal position obtaining.

> Section 19 of the Specific Relief Act, 1963, reads as under:
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> Relief against parties and persons claiming under them by subsequent title:- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—
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> (a) either party thereto;
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> (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;
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> (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;
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> (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 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."

As per the provision of aforesaid section, specific performance of a contract can be enforced against any other person claiming under the executant of the contract by a title arising subsequent to the contract.

In Thomson Press (India) Limited v. Nanak Builders & Investors Pvt. Ltd.[1], 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 for specific performance, 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.
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> 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

[1] 2013(3) ALD 111

breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

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

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

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

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

(1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.

(2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.

(4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants and none other.

In Basant Kumar Soni v. Mukund Das Soni[2] this Court referred to the decision of the Supreme Court in Sumtibai and others v. Paras Finance Co.[3] and also Kasturi v. Iyyamperumal[4].

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 Petitioners were claiming not under the

[2] 2010(4) ALD 490
[3] (2007) 10 SCC 82
[4] (2005) 6 SCC 733

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."

From the above observations and findings in Sumtibai case (3rd supra) it appears that a person having semblance of interest or title is entitled to be impleaded as a party to a suit even in 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 that as it may.

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."
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> 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.

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5 AIR 2010 SC 3109

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 view of the above settled legal position, which is succinctly stated in the latest decisions even purchasers *pendente lite* are also entitled to be impleaded as parties.

13. In the instant case, the defendant executed a registered mortgage deed in favour of the proposed 2nd defendant on 03.12.2011 whereas the suit contract of sale is dated 29.09.2011. Therefore, *prima facie*, it appears that the proposed 2nd defendant acquired right and interest in the property covered by the contract of sale, subsequent to the contract of sale, by virtue of the registered mortgage deed executed in his favour by the defendant. Thus, the proposed 2nd defendant claims that he lent huge money to the defendant under the mortgage transaction in good faith without notice of the suit contract of sale between the plaintiff and the defendant and also the suit, and that by virtue of the mortgage transaction he had acquired right and interest in the suit property. The contentions of the proposed defendant that he had no knowledge of the suit contract of sale and the suit and the rival contentions of the plaintiff that the mortgage transaction was a collusive transaction entered into after having knowledge of the suit and the orders of the Court etcetera cannot be prejudged and the said allegations and counter allegations and the rival contentions require detailed examination; and a decision as to which of the two versions is correct can be made only after full fledged trial and not at

this stage. Be it noted that jurisdiction to grant decree for specific performance is discretionary and such discretion has to be exercised not arbitrarily but on sound and reasons guided by judicial principles. Further, from the legal position it is also 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.

14. On the above analysis, this Court finds that the request in the petition of the proposed 2nd defendant seeking permission to implead him as 2nd defendant to the suit for specific performance merits consideration and that the order impugned warrants interference in the facts and circumstances of the case and the legal position obtaining.

15. In the result, the Civil Revision Petition is allowed and the order, dated, 09.11.2016, of the learned Special Sessions Judge for trial of cases under SCs & STs (POA) Act, 1989-cum-VII Additional District & Sessions Judge, Ranga Reddy District, at L.B.Nagar, passed in I.A.No.110 of 2016 in O.S.No.797 of 2011 is set aside and the said interlocutory application is allowed. Accordingly, the trial Court shall direct the plaintiff to carry out necessary amendments to the plaint and permit the plaint to be consequently amended, if the plaintiff wishes to do so by filing an appropriate application, as per law and procedure and give an opportunity to the impleaded defendant to file his written statement and then further proceed in the matter in accordance with the procedure established by law. However, the trial Court shall endeavour to dispose of the suit as

expeditiously as possible and preferably within two months from the date of filing of the written statement by the impleaded defendant.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th August, 2017
RAR