

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 18th July, 2017.**

+ **CM(M) No.720/2017**

ANIL KUMAR & ORS

..... Petitioners

Through: Mr. Bijballabh Tiwari & Mr.
Sudhir Kumar, Advs.

Versus

T K AHUJA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.24953/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

**CM(M) 720/2017, CM No.24952/2017 (for stay) & CM
No.24954/2017 (for condonation of 20 days delay in re-filing).**

3. This petition under Article 227 of the Constitution of India impugns the order (dated 18th March, 2017 of the Court of Additional District Judge (ADJ)-13, Central, Tis Hazari Courts, Delhi in Civil Suit No.15647/2016) of dismissal of the application filed by the three petitioners viz. Anil Kumar, Pankaj & Jyoti under Order I Rule 10 of the CPC for impleadment in the suit filed by the respondent no.1 T.K. Ahuja against the respondents no.2 and 3 viz. Kashmiro (*sic* Kashmira) Devi and Kamal Kumar for specific performance of an Agreement of Sale of immovable property.
4. The counsel for the petitioners has been heard.
5. The petitioners sought impleadment in the suit for specific performance pleading that they were co-owners of the immovable

property subject matter of the suit along with the respondents no.2 and 3 Kashmiro Devi and Kamal Kumar.

6. The learned ADJ has dismissed the application reasoning that the petitioners had to await the outcome of the litigation instituted by them for declaration of their ownership rights in the subject property and till such declaration was issued, the petitioners were neither necessary nor proper parties to the suit for specific performance.

7. The law as laid down in *Kasturi Vs. Iyyamperumal* (2005) 6 SCC 733 with respect to such applications for impleadment in a suit for specific performance of an Agreement of Sale of immoveable property is that a person who claims adversely to the vendor is not a necessary party. It was reasoned that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character. It was further held that merely in order to find out who is in possession of contracted property, a third party or a stranger to a contract cannot be added in a suit for specific performance of the contract of sale. It was yet further held that in the event of a decree for specific performance, the persons claiming adversely to the vendor / seller or claiming independent title would be at liberty to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC or to file an independent suit for declaration of title and possession. It was thus held that the strangers to the contract of sale, if are in possession of the property, will have to be sued in execution of a decree for specific performance for taking possession. The argument that impleadment should be allowed to avoid multiplicity of litigation was negatived.

8. Applying the aforesaid principles, the application of the petitioners for impleadment has been rightly dismissed and the petitioners are not entitled to impleadment.

9. I may however notice that Supreme Court in ***Sumtibai Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*** (2007) 10 SCC 82 though not overruling ***Kasturi*** supra held that ***Kasturi*** supra cannot be considered as laying down an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. It was held that if C can show a fair semblance of title or interest, he can certainly file an application for impleadment. Accordingly, the sons of the seller, who as per the documents of title in favour of the seller were co-owners along with the seller, were ordered to be impleaded in a suit for specific performance of an Agreement of Sale by the seller only.

10. Subsequently in ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited*** (2010) 7 SCC 417 the contention that there was a conflict between ***Kasturi*** supra and ***Sumtibai*** supra was negated and it was held that the two decisions were dealing with different situations requiring applications of different facets of Sub-rule (2) of Rule 10 of Order 1. It was explained, (a) that in ***Kasturi*** the Supreme Court held that in suits for specific performance only the parties to the contract or any legal representative of a party to a contract or a transferee from a party to a contract are necessary parties; (b) per contra in ***Sumtibai*** the Supreme Court held that a person having semblance of a title can be considered as a proper party; (c) ***Sumtibai*** did not lay down any proposition that anyone claiming to have any

semblance of title is a necessary party; (d) 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 Supreme Court accordingly on examination of the facts in **Mumbai International Airport Private Limited** found that the party seeking impleadment was neither a purchaser nor the lessee of the suit property and had no title or interest therein and the plaintiff had not sought any relief against the applicant. The presence of the applicant was thus held to be not necessary for passing an effective decree in the suit for specific performance. The presence of the applicant was held also to be not necessary for complete and effective adjudication of the matters in issue in the suit for specific performance. It was found that the applicant merely expected to get a lease of a property, of an agreement with respect to which property suit for specific performance had been filed.

11. A Division Bench of this Court in **Mehar Chand Sharma Vs. Manjeet Singh Kohli** (2015) 223 DLT 449 (DB) was concerned with an application for impleadment, in a suit for specific performance, of a person who was claiming to be the true owner of the property and disputing the title claiming which the defendant seller had agreed to sell the same to the plaintiff in the suit. After noticing all the judgments aforesaid of the Supreme Court it was held that if the applicant had a title to the property, the applicant would have to establish the said title in independent proceedings and finding that the applicant had already filed a suit, it was held that the right if any of the applicant would be decided in the said suit.

12. In view of the aforesaid position of law, I have enquired from the counsel for the petitioners / applicants as to what is there to show that the petitioners / applicants have a “semblance of title”, even if along with the respondents no.2&3 / defendants in the suit.

13. The petitioners themselves along with this petition have filed the “Agreement to Sell and Purchase” of which specific performance has been sought by the respondent no.1 / plaintiff T.K. Ahuja. The said Agreement to Sell is by the respondent no.2 / defendant Kashmiro Devi only in favour of the respondent no.1 / plaintiff T.K. Ahuja. The respondent no.2 / defendant Kashmiro Devi in the said Agreement to Sell has stated that she is the sole and absolute owner / occupier in possession of entire built up property on land ad-measuring 50 sq. yds. and being the sole owner thereof agreed to sell the same to the respondent no.1 / plaintiff T.K. Ahuja.

14. The counsel for the petitioners / applicants, instead of showing any document of title or anything where the petitioners or any of them have declared themselves to be co-owners of the subject property, has referred to the cross-examination of the respondent no.2 / defendant Kashmiro Devi in another suit filed by the respondent no.2 / defendant Kashmiro Devi against the petitioners / applicants where, according to the counsel for the petitioners / applicants, the respondent no.2 / defendant Kashmiro Devi has admitted the petitioners / applicants to be having a share in the property.

15. On enquiry it is informed that the said suit was filed prior to the suit for specific performance but after the date of Agreement to Sell.

16. Such self-serving documents and statements cannot, within the meaning of *Sumtibai* supra, be indicative of “semblance of title” in favour of the petitioners / applicants for the petitioners to be entitled to impleadment.

17. Moreover, in the present case also, the other suit is already pending and the danger of multiplicity of proceedings, which was cited in *Sumtibai* supra for allowing impleadment, also does not exist.

18. Thus in the facts of the present case, no ground for impleadment of the petitioners in the suit for specific performance is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 18, 2017

Gsr/pp..