

that the Respondent No.2,3,4 original defendant Nos.2,3 and 4 agreed to sell the land with the structures standing thereon situated at Queens Garden within the limits of Pune Cantoment Board, sub-registration sub-district of Pune, Taluka Haveli, District Pune, to respondent no.1 by agreement dated 20th August, 1989. At the time of executing the said agreement he paid a sum of Rs.29 Lacs and later on one lakh. As respondent nos. 2 to 4 failed and neglected to execute the sale-deed, he filed Special Civil Suit No.1197 of 1995 in the court of Civil Judge, S.D., Pune for specific performance of agreement dated 20.08.1989 and damages with following prayers-

- “(i) That a decree be passed for Rs.1,72,05,000/- as per the details of the claim mentioned in para 13 with further interest on Rs.22 lakhs, at the rate of 21 % per annum from the date of payment of the amount and thereafter till payment is made by the defendant to the plaintiff;
- (ii) That it be declared that the repayment of the said dues in para (I) above is secured by a statutory charge on the suit premises in para 1 above and/or the right, title and interest of the defendants therein;
- (iii) That the defendants be ordered and decreed to pay to the plaintiff the dues mentioned in sub-prayer (I) above and costs of the suit by date that may be fixed by this Hon'ble Court for redemption and in the event of the defendants failure to pay the sum on the said date, the suit premises described in para 1 of the plaint and/or the right, title and

interest of the defendants therein be sold under the orders and directions of this Hon'ble Court and the net sale proceeds thereof be applied in or towards the satisfaction of the Plaintiff's dues claimed herein;

- (iv) That in the event of there being any deficiency on such sale as mentioned in proceeding sub-prayer (iii) in the sale proceeds, liberty be reserved and granted to the plaintiff to apply for and obtain decree against the defendants to the extent of such deficiency;
- (v) That for the purposes aforesaid necessary orders be passed, directions be given and inquiries be made as this Hon'ble Court may deem fit and proper;
- (f) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint a Receiver of the property with all powers under Order 40 Rule 1 of the Civil Procedure Code;
- (g) That pending the hearing and final disposal of the suit, the defendants by themselves their servants, agents or otherwise be restrained by a perpetual order and injunction of this Hon'ble Court from or in any manner disposing off or alienating or developing or constructing or encumbering or creating any third party interest or creating any new tenancies in respect of the suit premises described in para 1 of the plaint or any part thereof;
- (h) For ad-interim reliefs in terms of prayers (f) and (g);
- (i) Plaintiff be awarded costs of the suit and other expenses;
- (j) And the Hon'ble Court be pleased to pass such other orders as may be deemed fit and proper in the circumstances of the case."

to 4 entered into an agreement with the petitioner for sale of the same property by an agreement dated 4th July, 1989. Pursuant to the said agreement he made part payment of Rs.29,12,000/- to respondent nos.2 to 4. As respondent nos.2 to 4 failed to execute the sale-deed, he filed Special Civil Suit No.819 of 2006 in the court of Civil Judge, S.D., Pune on 21st April, 2006 with following prayers-

- “(a) The Defendant be directed to specifically perform the said agreement dated 4th July, 1989 and execute deed of assignment cum sale deed in terms of the said agreement and a decree to that effect be passed in favour of the Plaintiff and against the Defendants;
- (b) Failure on the part of Defendants to so execute the final conveyance on tender of the balance consideration, a court commissioner be appointed and he be directed to execute the deed of final conveyance in favour of the Plaintiff as aforesaid;
- (c) The Defendants be restrained by an order of permanent injunction restraining them from transferring, assigning, selling, alienating the suit property or any part or portion thereof to third person and/or from creating third party interest therein;
- (d) The cost of the suit be awarded to the plaintiffs from the defendants;
- (e) Such other orders as may be deemed just and proper may also be passed.”

In that suit, respondent nos. 2 to 4 filed their Written Statement dated 17th October, 2006. On the basis of the said Written Statement, the petitioner learnt that the respondent nos.2 to 4 executed agreement for sale with respondent no.1 for same property and respondent no.1 filed present suit for specific performance. On the basis of the knowledge from the Written Statement, the petitioner filed an application under Order 1 Rule 10 of CPC on 22nd October, 2013 for joining him as a party defendant in a suit filed by respondent no.1 that is Special C.S. No. 1197 of 1995. That application was rejected by the Trial Court by the impugned order dated 16th December, 2013. Feeling aggrieved, the petitioner filed the present writ petition.

5 Mr Patil, learned advocate appearing on behalf of the petitioner submits that the issue involved in Special C.S. No. 1197 of 1995 filed by respondent no.1 and Special C.S. No. 819 of 2006 filed by him is in respect of the same property. He submits that respondent nos. 2 to 4 agreed to sell the suit property to the petitioner in the month of July 1989 and also executed an agreement for sale for same property in favour of respondent no.1 on 20th August 1989. He submits that if any order is passed in Special C.S. No. 1197 of 1995 in favour of

respondent no.1, petitioner's right, title and interest will affect in respect of an agreement for sale executed on 4th July 1989 in his favour for same property.

6 The learned counsel for petitioner further submits that the petitioner had apprehension that respondent no.1 and respondent nos.2 to 4 may defeat the petitioner's right, title, interest in respect of the suit property by obtaining some order by consent. Hence, the application filed by the petitioner under Order 1 Rule 10 of C.P.C. for joining him as a party defendant in a suit filed by respondent no.1 ought to have been allowed by the trial court. He submits that the trial court had come to the conclusion that in a suit for specific performance, it is not necessary to join the third party as a defendant. He further submits that the Trial Court erred in coming to the conclusion that the third party is neither proper nor necessary party to the suit filed by respondent no.1. He further submits that in the interest of justice this Hon'ble Court be pleased to set aside the impugned order dated 16th December, 2013 passed by the Trial Court below exh.168 in Special C.S. No.1197 of 1995 and allow the petitioner's application dated 22nd October, 2013 under Order 1 Rule 10 of the C.P.C. directing respondent no.1 to join

the petitioner as a defendant in his suit that is Special C.S. No. 1197 of 1995. He submits that if the present Writ Petition is not allowed, irreparable loss will be caused to the petitioner.

7 On the other hand, Mr Jamdar, learned advocate for respondent no.1 vehemently opposed the present Writ Petition. He submits that the Trial Court, rightly relying on the Apex Court Judgment in the matter of **Kasturi Vs. Iyyamperumal** reported in **AIR 2005 S.C. 2813** held that the petitioner is neither proper nor necessary party to the suit filed by respondent no.1 against respondent nos.2 to 4, because no relief is claimed by respondent no.1 against the petitioner. He further submits that though the petitioner learnt about the litigation between respondent no.1 and respondent nos. 2 to 4 from the Written Statement dated 17th October, 2006, they filed the present application below exh.168 on 22nd October, 2013 that is after more than seven years. He submits that paragraph 19 and 20 of the Written Statement dated 17th October, 2006 clearly shows that respondent nos.2 to 4 admitted the execution of the agreement for sale dated 20th August, 1989 in favour of Respondent No.1. Para 19 and 20 of the Written Statement reads thus-

- “(19) Without prejudice to the above contentions these defendants submits that the plaintiff has suppressed the fact that he was instrumental in getting the defendants to execute another agreement in respect of the suit property with one Shri. K.M.Talera dated 20/08/1989 and thus gave up all rights arising out of the alleged agreement dated 4/7/1989;
- (20) Defendants submit's that plaintiff has suppressed the fact that another suit has been filed against the defendants by the said K.M.Talera, bearing Special Civil Suit No. 1197/1995, to the knowledge of the plaintiff and the same is pending.”

He submits that on the basis of delay and latches also the application filed by the petitioner, rightly rejected by the Trial Court. Therefore, there is no question of entertaining the present Writ Petition under Article 227 of the Constitution of India.

7 Learned advocate for respondent no.1 submits that the Apex Court in the matter of **Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.**, reported in **2012 (8) S.C.C. 384** held that an application for joining the party in a specific performance suit to be filed as early as possible. In support of his application he relied on paragraph nos. 41.5 and 41.6 of the above judgment, which reads thus-

- “(41.5) In a suit for specific performance, the court can order

implement of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

- (41.6) However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

8 I have heard both sides at length. It is to be noted that the petitioner already had filed Special C.S. No. 819 of 2006 for specific performance of an agreement for sale dated 4th July, 1989. That suit is already pending for hearing and disposal on merits. The Trial Court had rightly held in paragraph 5 of the impugned order that on the basis of the Judgment of the Apex Court in the matter of **Kasturi** (supra) there is no question of allowing the third party to join as a defendant in a suit for specific performance. Considering this fact, I do not find any substance in the present petition and hence the Writ Petition stands rejected. No order as to costs.

(K.K.TATED, J.)