

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06TH DAY OF SEPTEMBER 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

A. Nos.3565 and 3566 of 2019
in

C.S.No.673 of 2008

and

A. Nos.3567 and 3568 of 2019
in

C.S.No.656 of 2008

and

A. Nos.3569 and 3570 of 2019
in

C.S.No.216 of 2010

C.S.No.673 of 2008:

E.Jeevanandam

Son of Mr.Ellappan

No.14, Main Road, Alapakkam,

Chennai 600 116.

... Plaintiff

-Versus-

Mrs.Uma

Wife of Mr.P.Sarguru

& daughter of Mr.V.K.P.Sunkavally

No.2N537, Pearl Avenue, Glen Ellyn,

Illinois 601307, USA.

Local Address No. 51A, Mount Poonamallee Road,

St.Thomas Road,

Chennai 600 016.

... Defendant

A.Nos.3565 and 3566 of 2019:

E.Jeevanandam

Son of Mr.Ellappan

No.14, Main Road, Alapakkam,

Chennai 600 116.

...Applicant/Plaintiff in

A.Nos.3565 and 3566 of 2019

-Versus-

1. Mrs.Uma

Wife of Mr.P.Sarguru

& daughter of Mr.V.K.P.Sunkavally

No.2N537, Pearl Avenue, Glen Ellyn,

Illinois 601307, USA.

Local Address No. 51A, Mount Poonamallee Road,

St.Thomas Road, Chennai 600 016.

...Respondent/Defendant

A.Nos.3565 and 3566 of 2019

2. Mr.P.Saraguru,
son of No.51A, Mount Poonamallee Road,
St.Thomas Road, Chennai-600 006.

3. Mrs.Rajalakshmi Sungavally,
Wife of Mr.V.K.P.Sunkavally,
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai-600 034.

4. Mr.S.Vijayakumar,
Son of Mr.V.K.P.Sunkavally,
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai-600 034.

..Respondents/Proposed defendants
A.Nos.3565 and 3566 of 2019

C.S.No. 656 of 2008:

E.Jeevanandam
Son of Mr.Ellappan
No.14, Main Road, Alapakkam,
Chennai 600 116. Plaintiff

-Versus-

Mr.S.Vijayakumar
Son of Mr.V.K.P.Sunkavally
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai 600 034.Defendant

A.Nos.3567 and 3568 of 2019:

E.Jeevanandam
Son of Mr.Ellappan
No.14, Main Road, Alapakkam,
Chennai 600 116.Applicant/ Plaintiff

A.Nos.3567 and 3568 of 2019:

-Versus-

1. Mr.S.Vijayakumar,
Son of Mr.V.K.P.Sunkavally,
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai-600 034.Respondent /defendant
A.Nos.3567 and 3568 of 2019:

2.Ms.Sunkavally Vindhya Vasini,
Daughter of Mr.Vijayakumar,
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai-600 034.

3. Mr.Sunkavally Anuttam Teja,
Son of Mr.S.Vijayakumar,
No.7, Mohan Kumaramangalam Street,
Nungambakkam, Chennai-600 034.

..Respondents/Proposed Defendants
A.Nos.3567 and 3568 of 2019:

C.S.No.216 of 2010:

E.Jeevanandam
 Son of Mr.Ellappan
 No.14, Main Road, Alapakkam,
 Chennai 600 116.

... Plaintiff

-Versus-

Mrs.Rajalakshmi Sunkavally
 Wife of Mr.V.K.P.Sunkavally
 No.7, Mohan Kumaramangalam Street,
 Nungambakkam, Chennai 600 034. Defendant

A.Nos.3569 and 3570 of 2019:

E.Jeevanandam
 Son of Mr.Ellappan
 No.14, Main Road, Alapakkam,
 Chennai 600 116.

...Applicant/ Plaintiff

A.Nos.3569 and 3570 of 2019:

-Versus-

Mrs.Rajalakshmi Sunkavally
 Wife of Mr.V.K.P.Sunkavally
 No.7, Mohan Kumaramangalam Street,
 Nungambakkam, Chennai 600 034. ...Respondent /defendant
 A.Nos.3569 and 3570 of 2019:

2.Ms.Sunkavally Vindhya Vasini,
 Daughter of Mr.Vijayakumar,
 No.7, Mohan Kumaramangalam Street,
 Nungambakkam, Chennai-600 034.

3. Mr.Sunkavally Anuttam Teja,
 Son of Mr.S.Vijayakumar,
 No.7, Mohan Kumaramangalam Street,
 Nungambakkam, Chennai-600 034.

..Respondents/Proposed Defendants

A.Nos.3569 and 3570 of 2019:

A.No.3565/2019:

Application praying that this Hon'ble Court be pleased
 Pleased to implead respondents 2,3 and 4 as party
 defendants in the above suit.

A.No.3566/2019:

<https://hcservices.ecourts.gov.in/hcservices/>

Application praying that this Hon'ble Court be pleased
 To permit the applicant/plaint to amend the plaint.

A.No.3567 of 2019:

Application praying that this Hon'ble Court be pleased Pleased to implead respondents 2,3 and 4 as party defendants in the above suit.

A.No.3568 of 2019:

Application praying that this Hon'ble Court be pleased To permit the applicant/plaintiff to amend the plaint.

A.No.3569/2019:

Application praying that this Hon'ble Court be pleased Pleased to implead respondents 2,3 and 4 as party defendants in the above suit.

A.No.3570/2019:

Application praying that this Hon'ble Court be pleased To permit the applicant/plaintiff to amend the plaint.

These applications coming on this day before this court for hearing the court made the following order:-

A.Nos.3565, 3567 and 3569 of 2019 have been filed by the applicant/plaintiff seeking to implead the respondents 2 and 3 as party defendants in the above said suits.

2. A.Nos.3566, 3568 and 3570 of 2019 have been filed by the applicant/plaintiff seeking to amend the prayer(s) of the plaint in the above said suits.

3. The relevant facts leading to the filing of these applications are as follow :-

(i) It is stated by the defendant in C.S.No.673 of 2008 that she along with her mother and brother, had entered into an agreement with one Saradamani Kandappan for sale of the suit property and adjacent properties owned by her mother and brother.

(ii) It is the case of the defendant in C.S.No.656 of 2018 that he along with his mother and sister, had entered into an agreement with the said Saradamani Kandappan for sale of the suit property and adjacent properties owned by his mother and sister.

(iii) According to the defendant in C.S.No.216 of 2010, she along with her son and daughter had entered into an agreement with Saradamani Kandappan for sale of the suit property and adjacent properties owned by them.

(iv) The said Saradamani Kandappan filed a suit in C.S.No.95 of 1984 before this Court for specific performance. The said suit was dismissed on 29.11.1991. She filed an appeal in O.S.A.No.12 of 1992 before this Court, which also met with the same fate on 19.06.2002. At this stage, the applicant / plaintiff had expressed his interest to buy the entire property. At that point of time, the plaintiff in C.S.No.95 of 1984 had an opportunity of filing an appeal before the Hon'ble Supreme Court. The respondents/defendants had entered into Memorandums of Understanding (MoUs) on 05.07.2002 with the plaintiff on certain terms and conditions, which were mutually agreed between them.

(v) As apprehended, the said Saradamani Kandappan filed Special Leave Petitions in S.L.P(C).Nos.20641 to 20643 of 2002 before the Hon'ble Supreme Court, which were numbered as Civil Appeal Nos.7254 to 7256 of 2002. Ultimately, the said appeals were also dismissed by the Hon'ble Supreme Court on 04.07.2011.

(vi) In the meanwhile, the present suits were filed by the plaintiff. The factum of dismissal of Civil Appeals before the Hon'ble Supreme Court was disclosed in July 2011 by filing a Written Statement in the present suit in C.S.No.216 of 2010. In the meanwhile, the respondents/defendants also settled the properties in favour of their family members.

(vii) The present suits are filed seeking for the following reliefs;

(a) declaring that the notice dated 25.06.2007 and the consequential rejoinder dated 27.08.2007, issued by the defendants seeking to cancel the MoUs dated 05.07.2002 between the plaintiff and the defendants, as illegal and

not enforceable ;

(b) permanent injunction restraining the defendants from executing any deed or action disturbing the plaintiff's right under the MoUs dated 05.07.2002 ; and

(c) mandatory injunction directing the defendants to comply with the defendants' obligations under Clause 9 of the MoUs dated 05.07.2002 between the plaintiff and the defendants and enable the plaintiff to purchase the suit properties within 180 days from the date of finality of the pending litigation in respect of the suit properties.

(viii) Paragraph 9 of the MoUs dated 05.07.2002 provide for a fresh agreement, with mutually agreed terms and conditions with a clause to have 180 days time, to be entered along with all the terms and conditions of the said MoUs, after clearance of all pending or future litigations and on finality of litigation, on production of the respective Court Orders and the advances paid under the MoUs will be treated as an advance for the fresh and final agreement for sale.

(ix) According to the applicant, pending the suits, the defendants had settled the properties between the family members, vide settlement deeds dated 17.12.2009, 14.07.2011 and 01.08.2011 respectively in respect of their respective portions of the property to defeat the rights of the applicant and the said settlement deeds were not brought to the knowledge of the applicant/plaintiff. Therefore, the applicant seeks to implead the settlees as respondents/defendants in the suits and declare the settlement deeds as sham and nominal and not binding on the plaintiff. Hence, the applicant/plaintiff also seeks to amend the prayer of the plaint as "to declare that the MoUs dated 05.07.2002 between the plaintiff and the defendants as agreements for sale and also for direction to execute the sale deeds in respect of the suits' properties in favour of the plaintiff.

4. The said applications in A.Nos.3569 and 3570 of 2019 were resisted by the respondents / defendants on the following grounds:

(i) The MoU was only an informal understanding as set out in Clause 9 and also admitted in the plaint. The intention of the defendant was only to have an informal MoU and to have a formal binding agreement of sale only after mutual negotiations and after the judgment of the Hon'ble Supreme Court.

(ii) It is further contended that the MoU itself contains an obligation in Clause 9 to enter into negotiations in good faith for the purpose of entering into a fresh agreement and sale deed thereafter. Therefore, the MoU itself explicitly provides that the MoU does not constitute a binding agreement with respect to the land in question. The suit is one for mandatory injunction to enter into *bona fide* negotiations for the purpose of entering into an agreement of sale. Therefore, the MoU is an agreement to enter into an agreement and it cannot constitute a "suit on land".

(iii) Admittedly, the earlier suit filed by the said Saradamani Kandappan was pending and the parties, consciously, did not enter into any concluded contract, but only agreed upon an informal memorandum, which by itself did not create any interest in the property, excepting any obligation to have good faith negotiations with a view to enter into a binding agreement.

(iv) It is also pointed out that the said Saradamani Kandappan filed the Contempt Petitions in Cont.P.Nos.28 and 29 of 2009 before the Hon'ble Supreme Court contending that the MoU dated 05.07.2002 entered into between the plaintiff and the defendant amounted to contempt and therefore, the defendant should be punished for. At that juncture, the defendant had pointed out the nature and scope of the MoU to the Hon'ble Supreme Court and also submitted that the

MoU did not even amount to an agreement of sale and it was merely an informal understanding between the parties to enter into a good faith negotiations on a future date.

(v) It was further contended by the learned counsel for the defendant that the MoU per-se does not create any interest in the property or right to get a Sale Deed registered. Therefore, the suit itself cannot be considered as one for land. Contending so, he argued that Section 52 of the Transfer of Property of Act is inapplicable. As the settlement deeds are registered documents and the suit itself is purely a speculative one, the Hon'ble Supreme Court had rendered a judgment on 04.07.2011 in Cont.P.Nos.28 and 29 of 2009. However, these applications are filed belatedly, despite the fact that the dismissal of Civil Appeals before the Hon'ble Supreme Court was set out in the written statement itself. As the suit is not one for land, the question of subsequent alinees or settlees does not arise. Hence, she prayed for dismissal of the applications.

5. The applications in A.Nos.3565 to 3568 of 2019 in C.S.Nos.673 and 656 of 2008 were resisted by the respondent/ defendant contending that these applications are filed only with a view to protract the proceedings, especially after the pleadings are complete and the suits itself are ripe for trial. The amendment sought for by the applicant/plaintiff is squarely barred by limitation and that the parties sought to be impleaded are neither necessary parties nor proper parties. It is further contended that the main suits itself are not maintainable, since an agreement to enter into an agreement is not enforceable in law. The Hon'ble Supreme Court had already given a finding that the MoU is not an agreement of sale and the applicant cannot now seek to modify the said order by way of the present proceedings before this Court. It is also contended that at the time of passing of the order by this Court on 11.09.2018, it was brought to the notice of

this Court that the settlement deeds within the family had been executed. Admittedly, the MoUs will not amount to an enforceable Agreements of sale and that the question of impleading the proposed defendants 3 and 4 in the suits and also seeking reliefs to declare the Settlement Deeds do not arise. The MoUs were only an informal understanding as mentioned in Clause 9 therein and the defendants wanted to enter into formal binding agreement of sale after mutual negotiations. As such, the amendments sought for by the applicant/plaintiff, are not maintainable, as they would amount to altering the very frame and structure of the suits, and hence, the applications are liable to be rejected. Hence, they prayed for dismissal of these applications.

6. The question that arises for determination is as to whether the amendment as prayed for by the plaintiff can be allowed ?

7. The MoUs dated 05.07.2002 were entered into between the plaintiff and the defendants immediately after the dismissal of O.S.No.12 of 1992 on 19.06.2002 filed by the said Saradamani Kandappan. As the litigations had not reached finality, consciously, both the parties have entered into the MoUs. It is stated that on coming to know of the leave granted to the said Saradamani Kandappan in S.L.P(C).Nos.20641 to 20643 of 2002, the applicant/plaintiff started making illegal demands. Hence, the defendants had to cancel the MoUs dated 05.07.2002. Immediately, the suits were filed only to declare the said notices cancelling the MoUs, as bad. Therefore, unless the MoUs dated 05.07.2002, which were executed by both the parties are revived, the question of entering into a fresh agreement on terms to be negotiated, will not arise.

8. It is relevant to advert to Clause 9 of the said MoUs, which reads as follows:-

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"A fresh agreement with mutually agreed terms and conditions with a clause to have

180 days time has to be entered along with all the terms and conditions of this MoU after the clearance of all pending or future litigations and on finality of litigation on production of the respective Court Order and the advances paid under this MoU will be treated as an advance for the fresh and final agreement for sale."

9. Therefore, it is contended that the alleged terms between the parties are only MoU and it will not be a binding agreement in the strict sense. The original prayer in the plaints is for mandatory injunction restraining the defendant to comply with the defendants' obligations under Clauses 9 of the MoU dated 05.07.2002.

10. It would be relevant to point out that while Civil Appeals filed by the said Saradamani Kandappan were pending before the Hon'ble Supreme Court, Cont.Petition.Nos.28-29 of 2009 were filed praying to punish the respondents 2 to 4 therein for committing breach of the order dated 11.11.2002 made in Civil Appeal Nos.7254-7256/2002, wherein, the Hon'ble Supreme Court had passed an interim order that the respondents shall not encumber the property in any manner. The present suits filed by the plaintiff were brought to the knowledge of the Hon'ble Supreme Court and the same is based on the MoUs. It was contended that the applicant had received money under the said MoUs, which amounts to creating encumbrance over the suit properties. While considering as to whether the MoUs would amount to creating any encumbrance, the Hon'ble Supreme Court had held that mere execution of MoUs agreeing to enter into Agreements to sell the properties will not amount to encumbering a property, as an encumbrance is the charge or burden created by transfer of any interest in a property. Merely receiving advances or amounts in pursuance of an MoU, would also not

amount to creating an encumbrance. It is further held that the MoUs, said to have been executed by respondents 1 to 3 therein provide that the agreements of sale, with mutually agreed terms and conditions, will be entered into between the parties after clearance of all pending or future litigations. Therefore, "MoUs are not even agreements of sale".

11. Thus, the Hon'ble Supreme Court had categorically held that the impugned MoUs in the suits dated 05.07.2002, will not amount to agreements of sale. While so, the prayer of the plaintiff seeking amendment to declare the MoUs dated 05.07.2002 between the plaintiff and the defendants, as agreements of sale and to direct the defendants to execute sale deeds in respect of the suit properties in favour of the plaintiff within such time as may be stipulated by the Court as against the findings of the Hon'ble Supreme Court could not be granted, when the very same MoUs had been rejected by the Hon'ble Supreme Court categorically holding that the same are not agreements of sale.

12. Reliance was also placed by the learned counsel for the respondent/defendant in A.Nos.3569 and 3570 of 2019 on the decision of the Supreme Court in the case of **REVAJEETU BUILDERS AND DEVELOPERS -VS- NARAYANASWAMY AND SONS AND OTHERS [(2009) 10 SCC 84]**, wherein, in Paragraph 63, it has been held as follows:-

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

Going by the principles laid down by the Hon'ble Supreme Court in the above referred case, the amendment sought for by the plaintiff is absolutely unsustainable, as the proposed amendment constitutionally or fundamentally change the nature and character of the case/suits.

13. So far as the question of filing the amendment belatedly is concerned, it is seen that the applicant/plaintiff was aware of the pendency of the appeal. The MoUs themselves clearly state that the fresh agreements can be entered into after finality of all the litigations. Therefore, as a prudent person, the plaintiff ought to have been vigilant in making his claim. Hence, the agreements which could itself be entered into between the parties based on the MoUs, have already been cancelled by the defendants and unless the same are revived, the question of entering into fresh agreements does not arise. Therefore, even presuming that the delay is one of the consideration while allowing the application under Order VI Rule 17 C.P.C, the said issue does not arise, in view of

the change of constitution of the suits, if the amendment is allowed.

14. Learned counsel for the applicant / plaintiff placed reliance on the decision of the Hon'ble Apex Court reported in **(2012) 5 SCC 337 [RAMESHKUMAR AGARWAL -VS- RAJMALA EXPORTS PVT.LTD., AND OTHERS]**, which will not have any relevance to the issue on hand.

15. The learned counsel for the applicant / plaintiff further placed his reliance on the decision of the Allahabad High Court reported in **AIR 2000 Allahabad 90 [Om Rice Mill, Jaspur and others -vs- Banaras State Bank Ltd., Kashipur and Another]**, wherein, in paragraphs 18 and 19, it has been held as follows:-

"18. Order 6, Rule 17 permits amendment at any stage of the proceedings as may be necessary for the purpose of determining the real question in controversy between the parties. The expression at any stage of the proceedings is far more elastic than the stage contemplated in Order 9, Rule 7 which specifies in no uncertain terms as to at what stage it will be attracted. Whereas the expression at any stage used in Order 6, Rule 17 is not circumscribed or limited by any condition. The legislature in its wisdom had left the same very wide open without imposing any kind of limitation to its elasticity. If it is necessary for the purpose of determining the real question in controversy then it can be allowed before, or at or after the trial or even after judgment or in appeal. It can be allowed even before delivery of judgment.

was held that an amendment can be allowed at any stage of the proceedings, *Baker Ltd. v. Medway and Co.*, 1958 1 WLR 1216 (CA) wherein it was held that amendment may be allowed before, or at, or after the trial, or even after judgment or on appeal, *Badri v. S. Kripal*, AIR 1981 Madh Pra 228, *B. N. Das v. Bijaya*, AIR 1982 Orissa 145, in which it was held that amendment can be allowed till delivery of judgment."

16. The learned counsel for the applicant / plaintiff also placed on the decision of the Hon'ble Supreme Court reported in **2006 (4) SCC 385 in the case of Rajesh Kumar Aggarwal and Others -vs- K.K.Modi and others**, wherein, in paragraphs 14 to 19, it has been held as follows:-

"14) Order 6 Rule 17 C.P.C reads thus:-

"17. Amendment of Pleadings—The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

This rule declares that the Court may, at any stage of the proceedings, allow

either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

15. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure

of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

As the amendment now sought for is not necessary for determining the real question in controversy between the parties, the above judgment of the Hon'ble Supreme Court may not be applicable for the present case.

17. So far as the impleadment of the subsequent settlees of the plaintiff as party defendants are concerned, it is contended that the plaintiff being the *dominus litus*, wanted to implead the proposed defendants on the ground that they might be adversely affected by the outcome of the suits. In this regard, reliance was also placed by the learned counsel for the applicant/plaintiff on the decision of the Hon'ble Supreme Court reported in **2018 (15) SCC Page 614 [ROBIN RAMJIBHAI PATEL -VS- ANANDIBAI RAMA ALIAS RAJARAM PAWAR AND OTHERS]**, wherein, in paragraphs 7 to 9, it has been held as follows:-

7. As it appears from the aforesaid paragraph this Court accepted the status of *dominus litus* of the plaintiff and proceeded to hold that if the plaintiff did not want to join the rival claimants as defendant in the pending suit, the risk was totally of the plaintiff and he cannot

be forced to join them as party defendant.

8. In the aforesaid context, this Court also considered the provisions of 1, Rule 10 CPC and in paragraph 7 it expressed its view that the relevant provisions show that the necessary parties in a suit for specific performance of a contract for sale are not only parties to the contract or their legal representatives but also a person who had purchased the contracted property from the vendor. It was further elaborated that: (Kasturi case SCC p.738, para 7)

"7..... In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party."

9. In our considered opinion, the judgment of the three Judge Bench in the Kasturi's case (supra) recognises this special status of a plaintiff which is well settled by several earlier judgments also and when the plaintiff wants to implead certain persons as defendants on the ground that they may be adversely affected by the outcome of the suit, then interest

of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors."

18. However, in this case, the above principles will have no application, based on which, the impleadment asked for itself, is negatived. Hence, the above judgment of the Hon'ble Supreme Court is not applicable to the instant case.

19. Though as a general rule, plaintiff is a dominus litus and can choose a person against whom he can litigate a person who may not be a necessary party to effectively adjudicate, need not be added as a party. In this regard, it will be useful to advert to Paragraph 15 of the judgment of the Hon'ble Supreme Court in **2010 (7) SCC 417 [MUMBAI INTERNATIONAL AIRPORT PVT.LTD -VS- REGENCY CONVENTION CENTRE AND HOTELS (P) LTD AND OTHERS]**.

"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 dispute 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."

20. As discussed earlier, considering the scope of the suit reliefs, the impleadment sought for is unnecessary. As the amendment to the plaint is also negatived, the parties to implead the proposed parties are redundant.

21. In the light of the above discussion, it cannot be said that the amendment sought for is a subsequent event relevant to the suit prayers. Therefore, A.Nos.3565, 3567 and 3569 of 2019 are dismissed. Consequently, amendment applications in A.Nos.3566, 3568 and 3570 of 2019 are also dismissed.

Sd/.P.S.N.J.

06.09.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/17.09.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.