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

Decided on: 12.07.2019

+ CM(M) 181/2019

GURSHARAN BUGGAL

..... Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

ANIL KUMAR DHINGRA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 4832/2019 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 181/2019 & CM APPL. 4831/2019

1. The petitioner has challenged an order of the Trial Court dated 30.05.2019, by which her application under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter "CPC") for impleadment in a suit has been dismissed.

2. The suit was filed by the respondent no.1/plaintiff against the respondent nos. 2 to 5 for specific performance of an agreement dated 17.10.2012 in respect of the suit property. The petitioner herein is the sister-

in-law of the defendants in the suit, being the widow of their deceased brother. She filed the application for impleadment contending that the suit property was inherited by her from her husband and the respondent no. 2 herein was only permitted to remain in possession of the suit property. She disputes the title of the defendants in the suit to enter into any agreement for sale, in respect of the suit property, and has also succeeded in a suit for possession of the suit property filed by her against the respondent no.2 herein. It is stated that the decree awarded in the suit in the petitioner's favour, is the subject matter of ongoing execution proceedings.

3. The Trial Court while dismissing the petitioner's application has relied upon the judgment of the three-judge bench of the Supreme Court *Kasturi vs. Iyyamperumal & Ors.* (2005) 6 SCC 733 to the effect that a non-party to an agreement, who does not claim title under the vendor, is not entitled to be impleaded. The observations of the Court in paragraphs 9, 10 and 18 of the said judgment are relevant and reproduced below:-

“9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor 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.

10. That apart, from a plain reading of Section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.

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18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant 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, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.”

4. Learned counsel for the petitioner submitted that the judgment in *Kasturi* (supra) has been applied erroneously by the Trial Court, in view of the subsequent judgment of two learned Judges in *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.* (2010) 7 SCC 417. He submitted that in the latter case, the Supreme Court reconciled the judgments in *Kasturi* (supra) and a judgment in *Sumitbhai & Ors. vs. Paras Finance Co.* (2007) 10 SCC 82, and observed that each case will turn on its own facts.

5. I am of the view that the judgment in *Mumbai International Airport Pvt. Ltd.* (supra) does not lead to the conclusion that a third party to the agreement who claims title adverse to the vendor is entitled as a matter of right to be impleaded in the suit at his or her instance. In *Kasturi* (supra), the Supreme Court in paragraph 9, has reiterated the general rule that the plaintiff being *dominus litis* chooses the person against whom he wishes to litigate and cannot be compelled to seek any relief against a non-party, subject to the provisions of Order I Rule 10(2) of the CPC. While analysing the judgment in *Kasturi* (supra) and *Sumitbhai* (supra), the Court has given some illustrations regarding the exercise of the discretion under the said

provision. In *Mumbai International Airport Pvt. Ltd.* (supra) in paragraph 24.4, 25 and 26, the Court has held that in case of a person claiming title adverse to the vendor, the Court has the discretion to either implead the party and decide the competing title of the vendor and the third party in order to determine the extent to which the vendee is entitled to specific performance, or refuse to implead the other party leaving open the question to be decided in an independent proceedings, or implead the third party but limit the determination in the suit only to the question of specific performance.

The observations of the Court to this extent are reproduced below:-

“24.4 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 the 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 defendant vendor 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.

25. 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.

26. 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 [(2005) 6 SCC 733] and Sumtibai [(2007) 10 SCC 82] are with reference to the facts and circumstances of the respective cases. In Kasturi [(2005) 6 SCC 733] 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 [(2007) 10 SCC 82] this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai [(2007) 10 SCC 82] did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor

did Kasturi [(2005) 6 SCC 733] 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.”

6. The principle in *Kasturi* (supra) was also followed by the Supreme Court in *Bharat Karsondas Thakkar vs. Kiran Construction Company and Others* (2008) 13 SCC 658 and in *Robin Ramjibhai Patel vs. Anandibai Rama alias Rajaram Pawar and Others* (2018) 15 SCC 614.

7. In view of the above observations of the Supreme Court in *Kasturi* (supra), as explained by the subsequent judgment in *Mumbai International Airport Pvt. Ltd.* (supra), the impugned order of the Trial Court cannot be said to be suffering from a jurisdictional error. It may also be noted that the present petition has been filed only in January, 2019 against the impugned order of the Trial Court dated 30.05.2017.

8. In these circumstances, the petition alongwith the pending application is dismissed.

PRATEEK JALAN, J.

JULY 12, 2019

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