

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11516 OF 2015**

|                                    |                 |
|------------------------------------|-----------------|
| Krishnabai Mallappa Herwade & Ors. | ... Petitioners |
| Vs.                                |                 |
| Shri Kiran Kalgonda Patil & Ors.   | ... Respondents |

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Mr. Chetan Gajanan Patil a/w. Mr. Mandar Bagkar for the Petitioners.  
Mr. Pratap Patil for the Respondent No.1 & 2.  
Mr Abhay A. Jadhavar i/b. Mr. Sachin K. Hande for the Respondent No.3.

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**CORAM: MADHAV J. JAMDAR, J.**

**DATE : 10<sup>th</sup> MARCH, 2021.**

**P. C:-**

1. By this Petition filed under Article 227 of the Constitution of India, the Petitioners have challenged the order dated 13<sup>th</sup> April, 2015 passed below Exhibit-53 in Special Civil Suit No. 5 of 2012 by Learned Civil Judge, Senior Division, Sangli. The said Application bearing Exhibit-53 was filed by the Plaintiffs under Order 1 Rule 10 of Code of Civil Procedure for impleading Petitioners i.e. sisters of original Defendant Nos. 1 to 4 as Defendant Nos. 7 to 10 and also for impleading as Defendant Nos. 11 and 12 subsequent purchasers of certain portions of the suit property.

2. The said suit bearing Special Civil Suit No. 5 of 2012 is specifically filed for the specific performance of the suit agreement dated 27<sup>th</sup> February, 2003. The said Application at Exhibit-53 was allowed by the impugned order dated 13<sup>th</sup> April, 2015. The said order is challenged by the Petitioners i.e. proposed Defendant Nos. 7 to 10 i.e. the sisters of vendors.

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3. It is the contention of Mr. Chetan Patil, Learned Advocate appearing on behalf of the Petitioners that as per the settled legal position, the parties to the agreement are only necessary and proper parties in the suit for specific performance. In support of his contention, Mr. Chetan Patil has relied on the following judgments:-

1. *Kasturi V/s. Iyyamperumal 2005 (6) SCC 733.*
2. *Bharat Karsondas Thakkar Vs. Kiran Construction Co. & Ors. 2008 AIR (SC) 2134.*
3. *Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru 1995 (1) JT 273.*
4. *Pandit Bahuso Khavare Vs. Rajaram Shivappa Shinge & Ors. (Bombay High Court, Writ Petition No. 3423 of 2019)*

4. On the other hand, it is the contention of Mr. Pratap Patil, the learned Advocate appearing for the Respondent Nos. 1 and 2 i.e. original Plaintiffs that suit filed is not simplicitor for specific performance but it is also for partition. He therefore submitted that the sisters are also necessary and proper parties.

5. A perusal of the agreement dated 27<sup>th</sup> February, 2003 executed between the original Defendant Nos. 1 to 4 i.e. Respondent Nos. 3 to 6 and original Plaintiffs i.e. Respondent Nos. 1 and 2 show that the Respondent Nos. 3 to 6 agreed to sell certain portion of agricultural land to the Respondent Nos. 1 and 2. While describing the property which is the subject matter of the said agreement, it is specifically mentioned that out of survey No. 229/3B, 230/B, 231/B land admeasuring 40 Aar is subject matter of sale agreement by excluding 80 feet DP Road and plot reserved by Municipality.

6. A perusal of the plaint clearly shows that the suit is filed for specific performance and the prayer clauses set out in the plaint are for execution of sale deed in compliance with the agreement and possession of the said 40 Aar portion demanded as per the description set out in the agreement. Thus, there is no substance in the contention of Mr. Pratap Patil that suit is not simplicitor for specific performance but for partition. The prayers which are set out in the plaint are made on the basis of various terms and conditions of the said agreement. Thus, it is very clear that the suit is filed only for the specific performance of the agreement.

7. It is well settled legal position as held by the Hon'ble Supreme Court in above mentioned judgments that in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the parties and whether the Plaintiffs are ready and willing to perform their part of the contract and whether they are entitled for the decree for specific performance of contract. It is also well established that the issues regarding the right, title and interest in the suit property of the strangers to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. If contentions of Mr. Pratap Patil are accepted that sisters are necessary and proper parties as the Plaintiff is seeking possession in the manner as specified in the agreement then, that will amount to converting the suit which is for specific performance into suit for title by impleading sisters as parties to the suit as according to Plaintiffs they are having certain right, title and interest. The contentions raised by Mr. Pratap Patil are squarely

covered by the judgment of Hon'ble Supreme Court in the matter between ***Kasturi V/s. Iyyamperumal 2005 (6) SCC 733***. In that judgment, it is clearly held that strangers to the contract cannot be impleaded as party in suit for specific performance. It is further held that if the decree is passed in favour of the Plaintiffs and the sale deed is executed in favour of the Plaintiffs, then the strangers to the contract have to be sued seeking possession, if such strangers are in possession of the property. The other judgments which are cited by Advocate Chetan Patil reiterates the said position.

8. The judgment of learned Single Judge dated 13<sup>th</sup> September, 2019 passed in Writ Petition No. 3423 of 2019 is squarely applicable to the facts of the present case, as in that case also sisters were sought to be impleaded as parties as they have filed suit for partition. The learned Single Judge on the basis of aforesaid judgment of Hon'ble Supreme Court in the case of ***Kasturi*** held that in suit for specific performance of contract for sale, the lis between the vendor and the vendee shall only be gone into and that question to be decided in a suit for specific performance of contract for sale is regarding the enforceability of the contract entered into between the parties to the contract and if the sisters are added in such a suit, the scope of the suit would be enlarged.

9. In the Writ Petition the challenge to the impugned order dated 13<sup>th</sup> April, 2015 is restricting only insofar as addition of the Petitioners as party Defendants is concerned. By the impugned order Respondent Nos. 9 and 10 were also directed to be impleaded as parties. The said part of the impugned order is not challenged by the Petitioners and Advocate Chetan Patil submits that even said part

is not challenged by the Respondent No. 9 and 10.

10. In view of above discussion the following order is passed:-

**ORDER**

- (i) The impugned order dated 13<sup>th</sup> April, 2015 passed by the learned Civil Judge, Senior Division, Sangli below Exhibit-53 in Special Civil Suit No. 5 of 2012 is quashed and set aside, as far as the Petitioners i.e. proposed Defendant Nos. 7 to 10 are concerned.
- (ii) It is clarified that Application bearing Exhibit-53 in Special Civil Suit No. 5 of 2012 is dismissed only as regards prayer to implead Petitioners i.e. proposed Defendant Nos. 7 to 10 is concerned. It is clarified that the impugned order dated 13<sup>th</sup> April, 2015 by which proposed Defendant Nos. 11 and 12 i.e. Respondent Nos. 9 and 10 were directed to be impleaded as parties to the said Special Civil Suit No. 5 of 2012 is not affected by this order.
- (iii) The Writ Petition is allowed in the aforesaid terms with no order as to costs.
- (iv) Ad-interim relief if any, shall stand vacated.

**(MADHAV J. JAMDAR, J.)**