

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

WRIT PETITION NO. 1587 OF 2020

Mrs. Sulbha Devendra Kokate

.. Petitioner

v/s.

Mrs. Surekha Kokate & Ors.

..Respondents

Mr. Teja Dande a/w. Bharat Gadhavi i/b. Tejas Dande & Associates for the Petitioner.

Mr. Nikhil Patil i/b. P.M.Jadhav for the Respondent .

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 30th MARCH, 2021.**

P.C. :

1. Heard finally with consent of Id. Counsel for the respective parties.
2. The Petitioner herein has challenged the Order dated 7th August, 2019 whereby the learned Civil Judge, Senior Division, Pune has dismissed the application filed under Order 1 Rule 10 of CPC for joining him as party to the suit.
3. Heard Mr. Dande, learned Counsel for the Petitioner. He submits that the Petitioner is the co-owner of the property and that the notice which has been challenged by the Respondent in the suit has been issued at the instance of the Petitioner. He therefore claims that the Petitioner is a necessary party and ought to be impleaded as Defendant in the suit. In support of his contention, he has relied upon

the decision of the Apex Court in ***Kasturi vs. Iyyamperumal & Ors. (2205) 6 SCC 733 and Gurmit Singh Bhatia vs. Kiran Kant Robinson & Ors. (2020) 3SCC 773.***

4. Per contra, Mr. Patil, learned Counsel for the Respondent submits that the Respondent herein has challenged the legality of the demolition notice issued by the Corporation. Relying upon the decision of the Apex Court in ***Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Gr. Bombay & Ors. 2016 SCC Online SC 1887*** he submits that the Petitioner is neither a necessary nor a proper party.

5. I have perused the records and considered the submissions advanced by the Id. Counsel for the respective parties.

6. It may be mentioned that in Gurmit Singh Bhatia the question for consideration was whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish or more particularly with respect to a person against whom no relief has been claimed by him. While considering the said question, the Apex Court has reiterated the principles in Kasturi (supra) and held as under:

“5.2. An identical question came to be considered before this Court in Kasturi and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct

and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are (1) there must be right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court 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.

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5.5. It is further observed and held by this Court in Kasturitht if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that the plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.

5.6. Therefore, considering the decision of this Court in Kasturi, the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original Defendant 1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add any party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs."

7. The Apex Court distinguished the decisions in ***Robin Ramji Patel vs. Anandibai Rama (2018) 15 SCC 614*** and the decision of this Court in ***Shri Swastik Developers v. Saket Kumar Jain, (2014) 2 Mh.L.J. 968*** holding that in the said cases, it was the Plaintiff who had submitted an application to implead the third parties /subsequent purchasers claiming title under the vendor of the Plaintiff. It was held that the position will be different when the parties submit an application to implead the subsequent purchaser as a party and that the subsequent purchaser opposes such an application for impleadment.

8. The aforesaid decision is not applicable to the facts of the present case as in the instant case the Respondent No.1 had challenged the notice under Section 351 issued by the Respondent No.2 Corporation for demolishing the structure in property CTS No. 1674, Sadashiv Peth, Pune. The Petitioner has sought to implead him as defendant in the suit on the ground that he has interest in the suit property and that the demolition notice was issued at his instance. It may be noted that in the case of Mohd. Hussesin Gulam Ali (supra) the challenge was to the legality of the notice issued under Section 351 of the MMC Act. In the said suit, application was filed under Order 1 Rule 10 inter alia on the ground that the applicants had ownership right in the suit house and that they were necessary party for proper adjudication of the rights of the parties. The trial Court had allowed the said application holding that the applicants were proper parties, if not necessary parties. The Writ Petition challenging the said order was

dismissed. While setting aside the order of the trial court as well as of the High Court, the Apex Court observed that the basic question to be decided in the suit was whether the notice under Section 351 of the Act is legally valid or not and to decide this question only necessary party is MMC who had issued the said notice. It was held that the applicants were neither necessary nor proper parties to decide the question involved in the suit. It was further held that the Plaintiff who is *dominus litus* cannot be forced to add any person as party to the suit unless the person sought to be impleaded is necessary party and without his presence, neither the suit can proceed, nor the relief can be granted. The Apex Court has held that the Applicants are neither necessary or proper parties to decide the suit. The ratio laid down by the Apex Court in the aforesaid judgment is squarely applicable to the facts of the present case. In the instant case, as stated above, the Respondent No.1 has challenged the notice issued by the Respondent No.2 Corporation. Hence the Corporation is the only necessary and proper party. The presence of the Petitioner is not necessary to decide the aforesaid controversy. Since the Petitioner is not a necessary or proper party, she cannot be impleaded as a party defendant in the suit. Under the circumstances, the impugned order does not warrant any interference. Hence the Petition is dismissed.

(ANUJA PRABHUDESSAI, J.)