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A.No.2539 of 2019
in C.S.No.291 of 2006

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Reserved on : 27.08.2021
Pronounced on : 22.12.2021

N.SESHASAYEE, J.,

In a suit for specific performance, the second plaintiff has taken out this application for transposing the first plaintiff as the second defendant.

2. The background facts are :

- There is a piece of property measuring about 2 grounds and 200 sq.ft. with a building thereon in S.No.116/1 of Koyambedu Village. This property originally belong to one Sesaiyah. Sesaiyah died in 1995. His wife had pre-deceased him. Sesaiyah had two children – Seshamma and Ananda Padmanaban. Of them, Ananda Padmanaban had passed away in 1997. His widow (daughter-in-law of Sesaiyah) is the defendant.
- Suppressing the existence of Seshamma, the defendant went about representing herself as the sole heir of Sesaiyah and offered the property in sale to the first plaintiff for a total consideration of



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Rs.49.50 lakhs. Accordingly, on 15.07.2004, the defendant and the first plaintiff herein entered into a registered sale agreement.

- Subsequent to this, Kesav, the first plaintiff came to know about the existence of Seshamma and her half share in the property. His later investigation revealed that on 12.01.2004, Seshamma along with her children have entered into an agreement for the sale of their half share in the property with one Purushotham.
- It is in this background, both Keshav as holder of the sale agreement with the defendant as regards her half share, and Purushotham, the agreement holder for the other half share belonging to Seshamma have entered into an agreement on 22.09.2004, nominated the second plaintiff/applicant herein, as nominee for purchasing the property. Indeed, the said agreement stipulated that the second plaintiff would pay the balance sale consideration payable by the first plaintiff to obtain the sale deed executed in his favour. Under this agreement, the second defendant has also made certain payments to both Keshav and Purushotham.
- About a year later, to be precise on 23.12.2005, Seshamma sold her



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half share to the second plaintiff (the subject matter of her agreement with Purushotham).

- Thereafter, the second plaintiff as a nominee of the first plaintiff and in his company has laid the suit for specific performance against the defendant for the other half share. Since it was found that the defendant was found to have only 50% share in the property, the sale consideration was reduced by half to Rs.24,75,000/- Since Rs.1.0/- was already paid as advance under the said agreement, after the institution of the suit, the second plaintiff has deposited the balance sale consideration of Rs.23.75 lakhs to the credit of the suit.

3. The defendant was initially set exparte and an exparte decree for specific performance came to be passed 08.09.2009. This decree was later set aside Vide order this Court 16.06.2016. The defendant had since filed her written statement and the trial too had commenced. During trial, the original sale agreement dated 15.07.2004 executed between the first plaintiff and defendant came to be marked as Ext.P-2 and the joint agreement which Purushotham and first plaintiff executed in favour of the second plaintiff on



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22.09.2004 was marked as Ext.P-13.

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4. According to the plaintiffs, after the filing of the written statement, on 01.04.2013, the first plaintiff and the defendant have cancelled the Ext.P-2 sale agreement dated 15.07.2004. This is the second agreement. Since this agreement jeopardise the interest of the second defendant under Ext.P13 agreement executed in his favour by the first plaintiff and Purushotham on 22.09.2004, the second plaintiff seeks transposition of the first plaintiff as second defendant in the suit.

5. This application is opposed by the defendant. In paragraph No.5 of the counter affidavit, the defendant admits that the sale agreement dated 15.07.2004 was cancelled Vide cancellation deed dated 01.04.2013. She further contends that as per the triparte agreement dated 22.09.2004 (Ext.P13), it is the first plaintiff who has to cause specific enforcement of the contract and hence, the second plaintiff/applicant cannot maintain the suit.



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6. Heard both sides. During argument, the counsel for the defendant submitted that the second agreement dated 22.09.2004 was not specifically pleaded in the plaint, whereas the counsel for the applicant would submit that the same was pleaded in paragraph No.9 in the plaint. It was again contended by the counsel for the defendant that the applicant is bringing up a new case. He relied on the authority of the Hon'ble Supreme Court in ***Kapilaben & others Vs. Ashok Kumar Jayantilal Sheth Thr. POA Gopalbhai Madhusudan Patel & others*** [2020 SAR (Civ) 237].

7. The resistance by the defendant at this stage as to the sustainability of the suit for specific performance at the instance of the second plaintiff is without merit. Keshav, the first plaintiff has entered into a sale agreement with Vijayalakshmi, the defendant, and in the circumstances indicated in Paragraph No.2, he had entered into a sale agreement with the second plaintiff. This Court perused the said agreement dated 22.09.2004 in favour of the second plaintiff and finds that it is an agreement whereunder the first plaintiff has assigned his right to the second plaintiff. As already indicated the second plaintiff is also seen to have paid the consideration to the first



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plaintiff at the time of execution of the said assignment deed. When things stood thus, the first plaintiff has cancelled the original agreement which obviously has left interest of the assignee of the said sale agreement in jeopardy.

8. As of today, the first plaintiff cannot sail with the second plaintiff nor can they be forced to sail together. Indeed, so far as the first plaintiff is concerned, there was not even an agreement for him to seek remedy. But, the legal effect of this cancellation deed, which admittedly was executed *pendente lite*, has to be considered only when the suit is decided. For the present, it must be said that the applicant/second plaintiff has made out a case for transposing the first plaintiff as second defendant in the suit.

8. In conclusion, this application is allowed, and the necessary amendment is required to be carried out within the a period of fifteen days from today after excluding the Christmas Holidays.

22.12.2021

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N.SESHASAYEE, J.,

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Pre-delivery order in
A.No.2539 of 2018
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22.12.2021