

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CMP No.1699 OF 2017**

***All Orissa State Bank Officers'Housing ..... Petitioner***  
***Cooperative Ltd., Bhubaneswar***

Mr. Sangram, Senapati, Advocate

-versus-

***Surendra Sahoo and others ..... Opp. Parties***

Mr. T.R. Meher, Advocate

**CORAM:**  
**JUSTICE K.R. MOHAPATRA**

**ORDER**

**15.07.2022**

**Order No.**

15.       1.       This matter is taken up through hybrid mode.
2.       The Petitioner in this CMP seeks to assail the order dated 17<sup>th</sup> October, 2017 (Annexure-6) passed by learned Senior Civil Judge, Bhubaneswar in Execution Case No.10 of 2013, whereby he allowed an application filed by the Opposite Party No.9 to implead her as a party to the execution case.
3.       Mr. Senapati, learned counsel for the Petitioner submits the litigation has a chequered carrier. An agreement was executed between the Petitioner-Society and Opposite Party Nos.1 to 8 for sale of Plot No.119 under Khata No.158 to an extent of Ac.2.800 decimals situated in mouza Kantabada under Bhubaneswar Tahasil in the district of Khurdha (for short 'the case land'). Pursuant to the said agreement for sale, the Opposite Party Nos.1 to 8 received the full consideration of Rs.60,88,000/- on 8<sup>th</sup> August, 2012. In spite of receiving full consideration money, no sale deed was executed within the stipulated time. Hence, the Petitioner-Society filed C.S. No.1313 of 2012 for specific performance of contract

before learned Civil Judge (Senior Division), Bhubaneswar seeking for a direction to the Opposite Party Nos.1 to 8 to present the sale deed already prepared on 8<sup>th</sup> August, 2012 to alienate the case land in its favour and for other consequential relief. In the said suit, a compromise petition was filed by the Petitioner in one hand and Opposite Party Nos.1 to 8 on the other on 29<sup>th</sup> January, 2013. All the parties appeared before the trial Court on 5<sup>th</sup> March, 2013 and the matter was posted to 24<sup>th</sup> March, 2013 for consideration. Learned trial Court on consideration of the compromise petition and on being satisfied that the compromise was executed without any undue influence and coercion and that it was lawful, decreed the suit on 24<sup>th</sup> March, 2013 before Lok Adalat. Since the Opposite Party Nos.1 to 8 did not comply with the direction made in the compromise decree, Execution Case No.10 of 2013 was filed. The executing court vide order dated 1<sup>st</sup> August, 2014 directed the Opposite Party Nos.1 to 8 to present the sale deed on or before 18<sup>th</sup> August, 2014 before the Sub-Registrar, Khandagiri, Bhubaneswar. Assailing the said compromise decree, the Opposite Party Nos.1 to 8 filed CMP No.1313 of 2014 before this Court. Said CMP was dismissed on merit vide order dated 3<sup>rd</sup> November, 2014 under Annexure-4 series. The Opposite Party No.4 being not satisfied preferred W.A. No.387 of 2014 challenging the order passed in CMP No.1313 of 2014 impleading the other Opposite Parties to the CMP as proforma Respondents. Writ Appeal was dismissed by order dated 12<sup>th</sup> February, 2015 holding it to be an abuse of process of Court with a caution to the Appellant therein to be careful in future.

3.1. Thereafter, Opposite Party No.9 filed a petition for impleading her as a party to the execution proceeding stating that she is a co-sharer in the case land. On consideration of the petition, the impugned order has been passed on 17<sup>th</sup> October, 2017 under Annexure-6.

4. It is submitted by Mr. Senapati, learned counsel for the Petitioner-Society that counter affidavit filed by the Opposite Party No.9 on behalf of all the Opposite Parties clearly shows their collusion and to see that the decree passed by a competent Court of law is frustrated. Relying upon the decisions in the case of **Kasturi -v- Iyyamperumal and others**, reported in (2005) 6 SCC 733, **Gurmit Singh Bhatia -v- Kiran Kant Robinson and others**, reported in (2020) 13 SCC 773 and **Jasobanti Mahakud -v- Ramesh Padhan and others**, reported in 2011 (II) CLR 1054, he submitted that a 3<sup>rd</sup> party to a contract is neither a necessary nor a proper party to the suit filed for specific performance of said contract. The Petitioner claims to be the co-sharer in respect of the case land, in respect of which the suit has been decreed in favour of the Petitioner directing Opposite Party Nos. 1 to 8 to present the sale deed already executed for registration. Thus, the impugned order is not sustainable. He, therefore, prays for setting aside the said order and to direct the executing Court to execute the decree at an early date.

5. Mr. Meher, learned counsel for the Opposite Parties relying upon the decision in the case of **Thomson Press (India) Ltd.-v- Nanak Builders and Investors P. Ltd. and others**, reported in 2013 AIR SCW 2389, submits that in a suit for specific

performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation. If a *lis pendens* purchaser can be impleaded as a party to the specific performance of contract, there can be no impediment for impleadment of a co-sharer as a party to the execution case as her valuable right is going to be affected by executing the sale deed in favour of the Petitioner-Society affording her an opportunity of hearing in the suit/execution proceeding. It is his submission that the Opposite Party No. 9 had no knowledge about the suit or execution proceeding till she filed an application for impleadment before the Executing Court. He, therefore, submits that learned executing Court has committed no error in passing the impugned order.

6. Heard learned counsel for the parties and perused the materials on record including the case laws cited by learned counsel for the parties.

7. Before delving into the issue, this Court feels it appropriate to keep in mind the ratio decided in **Kasturi** (supra) and **Gurmit Singh Bhatia** (supra). Relying upon the ratio decided in **Kasturi** (supra), Hon'ble Supreme Court in **Gurmit Singh Bhatia** (supra) held as under:

*"5.3. In paras 15 and 16, this Court observed and held as under: (Kasturi case, SCC pp. 741-42, paras 15-16)*

*"15. As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 1 and 4 to 11 before the court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, 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 appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of **Vijay Pratap v. Sambhu Saran Sinha** this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger 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. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for

*declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.*

16. *That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.”*

*That thereafter, after observing and holding as above, this Court in Kasturi further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the dominus litis, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law.”*

5.4           xxx                               xxx                               xxx

5.5. *It is further observed and held by this Court in the aforesaid decision that 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 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 the case of *Kasturi (supra)*, 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 no.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 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.”

8. This Court in ***Jasobanti Mahakud*** (supra) has held as under:

“5. Interpreting the scope of Sub-rule (2), Order 1 Rule 10 of C.P.C, the apex Court further observed as under:

*That apart, from a plain reading of the expression used in Sub-rule (2), Order 1, Rule 0 of the CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the Court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos.2 and 3 and Respondent Nos.1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos.1 and 4 to 11 in respect of other contracted property and in view of the detailed discussion made hereinafter, the respondent Nos.1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.*

*In giving such interpretation the apex Court also laid emphasis on the principle that the Plaintiff is dominus litis and in a suit for specific performance of contract for sale, he cannot be forced to add party against whom he does not want to fight unless it is a compulsion of the rule of law.”*

9. In view of the ratio decided in the aforesaid case laws, there remains no confusion that a stranger to a contract for specific performance is neither a necessary nor a party to the suit or any proceeding arising therefrom.

10. Relying upon the decision in ***Thomson Press (India) Ltd*** (supra), Mr. Meher, learned counsel for the Opposite Party Nos.1 to 9 has pressed into service the following paragraph for consideration.

*“22. In the case of Vidhur Impex (AIR 2012 SC 2925) (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:*

*“Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:*

1. *The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.*

2. *A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.*

3. *A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

4. *If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.*

5. *In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.”*

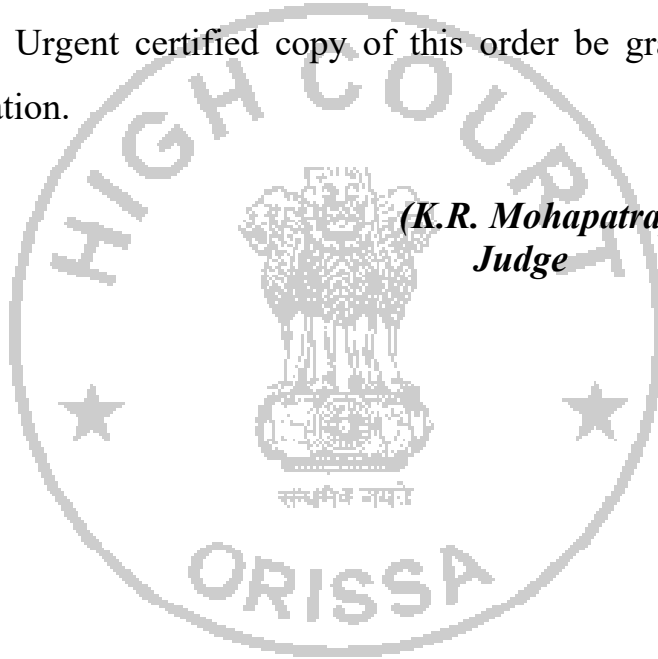
11. In the instant case, the Opposite Party No.9 is not a party to the contract. She claims to be a co-sharer in the case land. Her claim as a co-sharer in the case land has not yet been decided by any competent Court of law. By impleadment of Opposite Party No.9, the executing Court has necessarily converted an execution of decree of specific performance of contract to a suit for title, which is not permissible. It is also revealed that there is collusion between the Opposite Party Nos.1 to 8 and 9. After the compromise decree, the Opposite Party Nos.1 to 8 tried their best to deprive the Petitioner-Society from enjoying the fruit of the decree by filing different proceedings. After being unsuccessful in all the forums, a novel method has been adopted by filing an application for impleadment of Opposite Party No.9 to the execution proceeding. The Opposite Party No.9 has filed counter affidavit on behalf of the all the Opposite Parties in the CMP, which clearly shows their collusiveness. Learned executing Court while adjudicating the petition for impleadment of Opposite Party No.9 to the execution proceeding has neither considered the law in the field nor taken into consideration the conduct of the Opposite Parties.

12. In view of the discussions made above, this Court has no hesitation to set aside the impugned order under Annexure-6. Accordingly, the impugned order under Annexure-6 is set aside. Since the execution proceeding is pending since 2013, learned executing Court shall do well to finalize the same in accordance with law as expeditiously as possible without making any further delay.

13. With the aforesaid observation and direction, the CMP is disposed of.

Urgent certified copy of this order be granted on proper application.

**(K.R. Mohapatra)**  
**Judge**



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