

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 886 of 2023

SHANKAR PRASAD AGARWAL
VS.

M/S. DESON OPTICAL COMPANY PVT. LTD.

For the Petitioner : Mr. Rahul Karmakar, Adv.
Mr. Subhajit Chowdhury, Adv.
Mr. Sourav Guchhait, Adv.

For the Opposite party
nos. 3, 4 and 5 : Mr. Ranjit Roy, Adv.

For the O.P. No. 2 : Mr. Shyamal Chakraborty, Adv.
Mr. S. Paul, Adv.

Hearing concluded on : 21st August, 2023

Judgement on : 24th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of Constitution of India impeaches the order dated 15.7.2022 passed by the learned Judge, Small Causes Court at Sealdah in Title Suit No. 36 of 2017.
2. For the sake of convenience the parties would be referred to in the manner they have been arrayed in the suit.
3. Plaintiff files a suit for declaration and permanent injunction against the defendant no. 1 stating *inter alia* that he is duty bound to execute a deed of conveyance which is required to be registered and for mandatory injunction directing the opposite party no. 1 to execute and register the deed. The suit was initially registered as Title Suit No. 87 of 2014 and

subsequently renumbered as T.S. 36 of 2017. The opposite party no. 1 duly entered into appearance on 03.9.2014 and filed an application under Order VII Rule 11 of the Code of Civil Procedure which was disposed off. Thereafter, the defendant submitted his written statement. The parties have been directed to maintain *status quo* in respect of the suit property, by the learned Trial Court while disposing of an application for temporary injunction, filed by the plaintiff. Subsequently, the defendant no.1 stopped appearing before the learned Trial Court and on November 30, 2021 Om Prakash Agarwal filed an application for addition of party in the said suit followed by the application under Order I Rule 10 of the Code of Civil Procedure filed by the added defendant no. 3, 4 and 5 on 04.5.2022. Learned Trial Court after hearing the parties was pleased to allow both the applications and thus the intending defendants got impleaded in the suit as defendants nos. 2 to 5.

4. Being aggrieved by and dissatisfied with such order the plaintiff has preferred this application under consideration.
5. Heard Mr. Rahul Karmakar, learned counsel appearing on behalf of the petitioner, Mr. Ranjit Roy, learned counsel representing the opposite party nos. 3,4 and 5 as well as Mr. Shyamal Chakraborty assisted by Mr. Paul, learned counsel, representing the added defendant / opposite party no. 2.
6. Assailing the order impugned Mr. Karmakar submits that the plaintiff filed a suit to make the original defendant discharge his obligation pursuant to the agreement entered into by and between the plaintiff and the original defendant whereby the defendant agreed to transfer a shop room having an area 400 sq. ft. in the building he

constructed at a consideration of Rs. 3,00,000/- and for which the defendant made the plaintiff to surrender his tenancy. The consideration money was fixed at Rs.3 lacs but the defendant was dragging his feet to discharge his obligation.

7. According to Mr. Karmakar though the suit is for declaration, injunction, including mandatory injunction in essence, it is a suit to enforce the agreement entered into by and between the plaintiff and the original defendant. The plaintiff being the *dominus litis* had the liberty to decide the defendant. The added defendants being his siblings do not have anything to do with the said agreement. They are neither necessary parties, nor proper parties for the adjudication of the dispute. Learned Trial Court, however, failed to appreciate an agreement or a contract can be enforced only against either party of the contract or any person claiming under him by a title arising subsequent to contract, except a transferee for value who has paid the money in good faith or any person claiming under a title known to the plaintiff who might have been displaced by the defendant. The added defendants do not fit in either of these categories. Mr. Karmakar makes me go through **Section 19** of the **Specific Reliefs Act** which envisages :-

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

8. To buttress his point Mr. Karmakar places his reliance in ***Kasturi vs Iyyamperumal and Others*** reported in **(2005) 6 SCC 733**.
9. Refuting such contention of Mr. Karmakar, it is submitted by Mr. Roy, learned counsel for defendants nos. 3, 4 and 5 as well as Mr. Chakraborty, learned counsel for the added defendant no. 2 that the claim of the plaintiff stems out of the property occupied by the father of the parties to this proceeding as tenant. During his lifetime father entrusted all his sons and daughters to carry out the business. Therefore, the plaintiff could not have caused the mischief of entering into an agreement with the defendant no. 1 in order to deceive his siblings.
10. It is further contended by Mr. Roy that the defendant nos. 2, 3, 4 and 5 since have stepped into the shoes of their father, together with Shankar Prasad Agarwal, the plaintiff they are the necessary parties for proper adjudication of the suit in order to avert multiplicity of the proceeding.

11. According to Mr. Chakraborty, learned counsel for the defendant no. 2, the plaintiff surreptitiously entered into an agreement with sole object in his mind to defraud his brothers and sisters. The original tenant being the father of the plaintiff and added defendants, during his lifetime by executing a document entrusted all his children with the responsibility to run the business in the shop room and the added defendants as tenants tendered rent to the landlord. Therefore, to their exclusion the suit cannot be allowed to be adjudicated. The status as well as rights and interest of the added defendants would be jeopardized by the act of the plaintiff, therefore, the learned Trial Court was absolutely justified in passing the order impugned.
12. To buttress of his contention Mr. Chakraborty places his reliance upon judgment of Hon'ble Apex Court in the case of ***Sumtibai and Others vs. Paras Finance Co.*** reported in ***(2007) 10 SCC 82*** and ***Savitri Devi vs. District Judge, Gorakhpur and Others*** reported in ***AIR 1999 SCC 976***.
13. From the attending facts of this case it is admitted that the plaintiff files the suit for declaration that the defendant (original one) has obligation to execute and register a deed in favour of the plaintiff, pursuant to the contract and the decree for mandatory injunction to that effect coupled with permanent injunction and other relief.
14. Therefore, for practical purpose this is a suit for specific performance of a contract entered into by and between the plaintiff and M/s. Deson Optical Company Private Limited. The added defendants are alien to such contract.

15. The Hon'ble Apex Court in the case of **Kasturi (supra)** held at **paragraph 10** as under :-

“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.”

16. Since it is admitted that the added defendants are not party to that agreement they cannot be held to be necessary parties for the purpose of this suit.
17. In **Sumtibai and Others (supra)**, the Hon'ble Apex Court held that *a registered sale deed dated 12.8.1960 by which the property was purchased not only by Kapoor Chand (since deceased) the defendant but also by his sons. Therefore, it was held that as purchasers of the property sons of Kapoor Chand have semblance of title and by no stretch of imagination could be held to be mere busybodies or interlopers.*
18. In the said judgment Hon'ble Apex Court took into consideration the judgement in **Kasturi vs Iyyamperumal and Others** where it was held that *third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute.* In **Savitri Devi (supra)** the Hon'ble Apex Court reiterated the settled principle of law that if the intervener has the cause of action against the plaintiff relating to the subject matter of the existing action the Court has power to join the intervener to avoid the multiplicity of actions.
19. In this case at hand, which is essentially a suit for specific performance of contract, persons beyond the scope of Section 19 of Specific Relief Act cannot be considered to be necessary parties,

therefore, in my humble opinion, the learned Trial Court committed jurisdictional error while passing the order impugned without appreciating the scope of Section 19 of the Specific Relief Act.

20. The added defendants being the brothers and sisters of the plaintiff are claiming their right over the business in the shop room, which allegedly the plaintiff surrendered as sole tenant and entered into agreement.
21. The added defendants, referring to the document, alleged to have been executed by their father on 05.9.1988 or 20.3.1990 are expressing their grievances as the plaintiff of the suit, their brother, by his conduct is denying the legal rights the added defendants do have.
22. While appreciating their agony, as presented by both Mr. Roy and Mr. Chakraborty, learned counsels representing added defendants, I am of the view that they are not necessary parties to this suit which is essentially for Specific Performance of Contract.
23. They will be, however, at liberty to protect their right by filing appropriate suit for declaration. If they are allowed to participate in this suit and to raise the issue relating to their right in a suit for specific performance of contract, then the nature of the suit would change and it would become a multifarious suit, which is not permissible.
24. The order impugned, therefore, in my humble opinion should not be allowed to remain in force and should be set aside, which I accordingly do.
25. The Court further directs learned Trial Court to consider the fiscal issue and realize the requisite Court fees, as applicable in a suit for Specific Performance of Contract, if not already paid.

26. The revisional application, is thus, disposed of.
27. Let a copy of the judgement be sent down to the learned Trial Court for information and necessary action.
28. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)