IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 2nd OF FEBRUARY, 2024

MISC. PETITION No. 483 of 2024

BETWEEN:-

ASHISH S/O RAMESHWARLAL GARG, AGED ABOUT 43 YEARS, OCCUPATION: BOOK SELLER R/O: (A) VIMAL PUSTAK BHANDAR PUSTAK BAZAR NEEMUCH CANT (B) H O L I CHOWK BAGHANA NEEMUCH (MADHYA PRADESH)

.....PETITIONER

(BY SHRI HIMANSHU JOSHI, ADVOCATE ALONGWITH MS. NENA MISHRA, ADVOCATE)

AND

1. **MAHADEV PRASAD S/O LATE SHREE KISHAN KOSHAL, AGED ABOUT 55 YEARS, OCCUPATION: GOVT. SERVICE R/O: 1365, NAYA BAZAR BIHARGANJ NEEMUCH (MADHYA PRADESH)**

2. **VIMLA DEVI (WIDOW SHREE RAMESHWAR LAL JI AGRAWAL), AGED ABOUT 63 YEARS, OCCUPATION: HOUSE WIFE, R/O: HOLI CHOWK, BAGHANA, NEEMUCH (MADHYA PRADESH)**

3. **DEEPAK S/O LATE SHREE RAMESHWAR LAL JI AGARWAL (GARG), AGED ABOUT 53 YEARS, OCCUPATION: BOOK SELLER A. VIMAL PUSTAK BHANDAR, PUSTAK BAZAR, NEEMUCHCANT, B. HOLI CHOWK, BAGHANA, NEEMUCH (MADHYA PRADESH)**

4. **SMT. MANJU D/O LATE SHREE RAMESHWAR LAL JI AGARWAL (GARG), AGED ABOUT 40 YEARS, OCCUPATION: HOUSE WORK, R/O: HOLI CHOWK, BAGHANA, NEEMUCH (MADHYA PRADESH)**

5. **STATE OF M.P. THROUGH COLLECTOR NEEMUCH (MADHYA PRADESH)**

.....RESPONDENTS

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard on the question of admission.

By this petition preferred under Article 227 of the Constitution of India, defendant No.1 has challenged the order dated 28.11.2023 passed by the trial Court, whereby his application under Order 1 Rule 10 of the CPC for impleadment of Shree Yog Vedant Sewa Samiti (Trust), Indore, Indore Branch, Neemuch has been rejected.

02. The suit is for specific performance of contract. The proposed defendant is stated to be the owner and in possession of the suit property by the defendants. Admittedly, the proposed defendant is not a party to the agreement to sale executed between plaintiff and defendants specific performance of which has been sought for.

03. In **Panne Khushali and Another Vs. Jeewanlal Mathoo Khatik and Another, 1976 MPLJ 170 (FB),** it has already been held that a stranger to a contract in whom independent title is pleaded or asserted is not a necessary or a proper party to a suit for specific performance of that contract. It has been held as under:-

> **"15. In the light of the aforesaid discussion, we do not agree with the view taken by Krishnan, J. (as he then was) in Roopkishore and others v. (supra). The learned Judge has based his view on the ground that if the person claiming adversely to the vendors are not joined as parties in the suit, there would be a problem of possession and therefore, in the interest of the purchaser plaintiff and to avoid the multiplicity of suits, he is a proper party. But, in our opinion, these are not the valid considerations. If the plaintiff, even after notice of claim of title hostile to his vendor by an intervener, does not want to join the intervener, he takes the risk. He cannot be forced upon to join the intervener. We are in**

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agreement with the view taken by Bhargava, J. (as he then was) in Gananandrao v. Babulal and others (supra) that in a suit for specific performance of a contract for sale in respect of a property against the defendant, some person who applies for being impleaded as a party to the suit on the ground, he has a right by birth in the suit property, cannot be joined as a party under Order 1, Rule 10 of the Code, because if such a person was allowed to intervene in the suit as a party, the nature of the suit will change from a suit for specific performance of a contract to that of a suit for title. It has further been held that the proper course is to institute another suit for title, impleading parties to the suit in which the interveners had prayed for being joined as a party.

16. The question referred to us is :

"Whether in a suit for specific performance of a contract for sale, a third Person intervener, who contends that the suit property is joint property of the applicant, and he is also the co-owner of that property, would be made a party (defendant)."

Our answer is :

Strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the co-owners of the contracted property are neither necessary nor proper party and are, therefore, not entitled to be joined as parties to the suit."

04. Thus, in view of the authoritative pronouncement of the Full Bench of this Court, the proposed defendant who is not a party to the contract and in whom an independent title has been claimed is neither a necessary nor a proper party to the suit. The application for its impleadment as a defendant to the suit has rightly been rejected by the trial Court. There is no infirmity in the impugned order passed by the trial Court. The petition being devoid of merits is hereby dismissed.

(PRANAY VERMA)
JUDGE

Shilpa

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