IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6872 OF 2024

Suresh Vamanrao Gaikwad
Age 57 years,
Occupation : Agriculture and Business,
Residing at 5, Bhagwant Park,
Datta Mandir Road, Gaikwad Mala,
Taluka and District - Nashik. .. Petitioner

Versus

1. **M/s. Karva Developers**
through Shri Devkisan Brijlaal Karwa
Age 76 years, Occupation : Business,
Office at Opposite Nashik Road,
Railway Station, Nashik Road,
Deolali, Nashik. ..
2. **Shri Rambhau Tukaram Aute (Deceased)**
Through his Legal Representatives
2A. Radha Shankar Borade
Nee Mati Rambhau Aute
Age : 67 years,
Occupation : Agriculture and Homemaker. ..
3. **Sou Anjanabai Rambhau Aute (Deceased)**
through her Legal Representative,
Radha Shankar Borade (2A above). ..
4. **Shri Somnath Rambhau Aute (Deceased)**
Through his Legal Representatives
4A. Mrs. Lata Somnath Aute
Age : 67 years,
Occupation Agriculture & Homemaker. ..
5. **Ambadas Rambhau Aute**
Age 47 years, Occupation : Agriculture
All residing at Aute Mala, Deolaligaon
Taluka & Dist. Nashik. .. Respondents

....

- Mr. Mandar Limaye, Advocate for Petitioner.
- Mr. Shriram Kulkarni a/w. Mr. Sujay S. Palshikar, Advocates for

Respondent No.1.

- Ms. Janhavee Joshi a/w. Mr. Vishal Kanade, Mr. Vishal Tambat and Ms. Chaitali Bhogle , Advocates for Respondent Nos. 2 to 5.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 10, 2024

ORAL JUDGMENT :-

1. Heard Mr. Limaye, learned counsel for the Petitioner, Mr. Kulkarni, learned counsel for Respondent No.1 and Ms. Joshi, learned counsel for Respondent Nos.2 to 5.

2. The present Writ Petition impugns order dated 11.01.2024 passed in Application filed below Exhibit-17 in Regular Civil Appeal No.448 of 2016 (for short '**RCA**') by the Writ Petitioner - a third party, whose name is Suresh Waman Gaikwad seeking his impleadment as co-Appellant in the RCA as well as Defendant in the Suit proceeding which is decreed by the trial Court. Suit is originally instituted as Special Civil Suit No.121 of 1997 seeking specific performance of contract against Appellants in RCA by Respondents therein. For the sake of convenience parties shall be referred to as '**Plaintiff, Defendants and third Party (Petitioner before me)**'. Suit is filed by Plaintiff in the year 1997, seeking specific performance of Agreement against Defendants, who are nomenclatured as Respondent Nos.2 to 5 before me in the Writ Petition, in respect of land admeasuring 8649 sq. mtrs. out of 9982 sq.mtrs., situated within the jurisdiction of Nashik Municipal Corporation/Limits at Deolali. After a full length trial, Suit is decreed in favour of Plaintiff vide Judgment and Order dated 04.07.2008. Defendants being aggrieved filed RCA No.448 of 2016. Though RCA is filed immediately after the decree was passed, the filing number of the RCA gives a different impression, but it is not so. RCA No.448 of 2016 is the registration number, which has been given after it was transferred to the current designated Court. There is no delay in filing the RCA. Respondent No.1 is the Plaintiff represented by Mr. Kulkarni. Respondent Nos.2 to 5 are the Defendants, represented by Ms. Joshi before me. Mr. Limaye, represents the third party - Petitioner.

3. During pendency of RCA, third party i.e. Petitioner made Application below Exhibit-17, seeking his impleadment. Application is made on the premise that it is the third party himself, who contested the original Suit and it is he himself who filed RCA in the year 2008 on behalf of Defendants. This fact itself proves one thing at the outset itself and i.e. the third party who contested the Suit and filed RCA was clearly knowledgeable about the pending litigation between the parties. The reason for mentioning this, at the outset, is only because, reason of having knowledge of the litigation between parties has to be held against the third party primarily because of the timeline in the present case and the principal argument advanced by Mr. Limaye that the third party is a *bonafide* Purchaser for value and is a transferee *pendente lite*. Application seeking impleadment by the third party is filed on 24.02.2023. This is also a notable fact. That Application is appended at page No.147 of the petition. It is stated in the Application, rather cursorily that, Defendants executed a registered Power of Attorney dated 17.09.2004 in favour of third party and the same is still in subsistence and force. At this juncture, it needs to be noted that subsistence of the Power of Attorney is refuted by Defendants by informing the Court that it was cancelled by them in 2012 and this fact of cancellation is duly known and even acknowledged in correspondence between the parties.

4. Be that as it may, Application further states that the landowners i.e. Defendants agreed to sell the Suit property to the third party and they have received Rs. 50,00,000/- as consideration under a registered sale deed dated 04.11.2015 executed in favour of the third party by those Defendants. Once again at this juncture itself, it needs to be clarified that the alleged registered sale deed dated 04.11.2015 to which reference is made in the Application and is appended at page at page No.94 of the Writ Petition reveals two startling facts; one, viz. that adjudication of valuation of the Suit property on the face of record by the adjudication officer i.e. the market value of the Suit property is Rs.6,00,10,000/-, whereas the consideration stated in the Agreement is Rs.50,00,000/- only and second, the said Agreement is executed and signed by the third party himself appending his own signature as the Vendor and also as Purchaser on the basis of the alleged cancelled Power of Attorney. It is incidentally seen that the stamp duty that is paid by the third party is Rs.36,01,000/- (@5%) which is on the basis of market value of the Suit property being Rs.6,00,10,000/-. The above facts clearly revolt against the case of the third party, who has filed the Application for his impleadment in the year 2023. *Prima facie* on reading paragraph No. 1 of the Application itself and after having referred to the above facts, it clearly exposes the case of the third party in attempting to state that he is a *bonafide* purchaser for value of the Suit property from the Defendants. It is further averred in the Application that the third party is claiming ownership right in respect of the Suit property and, therefore, he seeks impleadment in the RCA.

There is also an averment made by the third party that due to hike in the prices of the Suit property Defendants have become greedy and wish to deprive the third party of his valuable right. Hardship is averred and therefore, impleadment is sought by the third party.

5. Mr. Limaye, learned Advocate appearing for the Petitioner – third party before me would submit that the third party being a *bonafide* purchaser for value on the basis of a registered sale deed has acquired title and therefore, he is a proper and necessary party to the RCA as his substantive right is affected. He would submit that substantive right of ownership is derived by the third party on the basis of the registered sale deed dated 14.11.2015. He would, therefore, submit that under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908 (for short '**CPC**'), Application seeking impleadment by a transferee *pendente lite* has to be allowed. Though this Court would clarify the position that such an Application can obviously be made, however it would be at the discretion of the Court and after considering the given facts of the case. It cannot be treated as an omnibus proposition. Mr. Limaye would submit that RCA be considered as extension of the Suit proceeding itself. He would further argue that no prejudice would be caused to Defendants if the third party is impleaded as a co-appellant. This submission however cannot be sustained. It is not known to law whether if two Appellants represented by two different sets of Advocates can ever be allowed to argue the RCA. This is stated only after confirming with Ms. Joshi, learned Advocate for Defendants as to whether they would be willing to agree to impleadment of the third party and after receiving a clear negative reply from her. In support of his submissions, Mr. Limaye has referred to and relied on five decisions of the Supreme Court. He has persuaded me to go through the said decisions. These decisions are in support of the proposition that a third party being a transferee *pendente lite* is required to be impleaded as a proper and necessary party in a proceeding since its substantial interest is already created in the Suit property by virtue of the registered sale deed dated 04.11.2015 in this case. There is one more crucial fact hinging on the *bonafides* of the third party which needs to be reiterated here before I consider the decisions cited by Mr. Limaye. On perusal of the copy of sale deed dated 04.11.2015, it is seen that sale consideration of Rs.50,00,000/- as stated in the Agreement has been paid over to seven parties / Defendants between the years 2007 and 2015 intermittently. It is seen that substantial payment was made in the years 2004, 2007, one payment in 2008 and two payments in 2015. As against this, the actual ready reckoner market value of the Suit property is Rs.6,00,10,000/-. The Petitioner - third party is conspicuously silent about such undervaluation of the Suit property. This fact speaks volumes about the *bonafides* of the third party claiming to be a transferee *pendente lite* and having proprietary right of ownership in the Suit property.

6. Mr. Limaye has referred to and relied upon the following decisions:-

(i) **Amit Kumar Shaw and Another Vs. Farida Khatoo and Another[1];**

(ii) **Gajanan Mahadeo Potdar Vs. Govind Maruit Jare and Ors.[2];**

(iii) **Urmila Pasari and Others Vs. Exide India Limited[3];**

(iv) **Life Insurance Corporation of India Vs. Sajeev Builders Private Limited and Others[4];**

(v) **Chandra Bai (Dead) Through Legal Representatives Vs. Khandalwal Vipra Vidyalaya Samiti and Others.[5];**

(vi) **Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others.[6].**

7. The lead decision, which Mr. Limaye has stressed while making his submissions is the decision in the case of **Amit Kumar Shaw**

1 (2005) 11 Supreme Court Cases 403.
2 2023 SCC Online Bom 1087: (2023) 5 AIR Bom R 275.
3 (2022) 15 Supreme Court Cases 564.
4 (2018) 11 Supreme Court Cases 722.
5 (2016) 12 Supreme Court Cases 534.
6 (2013) 5 Supreme Court Cases 397.

(*first supra*) and he has persuaded me to refer to paragraph Nos.8 to 10 and 12 to 16 thereof to contend that any transferee *pendente lite* will have to be joined as a proper and necessary party in a Suit proceedings once he establishes assignment in his favour or if devolution of property has taken place in his favour. He would submit that provisions of Order I Rule 10 CPC will have to be considered by Court in favour of such third party along with provisions under Order XXII Rule 10 read with Section 146 of CPC to allow impleadment of third party in the RCA. He would however submit that undoubtedly the provisions refer to the discretion of the Court to be exercised while considering such impleadment of third party as to whether he would be affected or otherwise and whether such a transferee would be ultimately bound by the final decree in the pending proceedings or the pending RCA in the present case. He would also fairly submit that Court will have to duly consider the question of subsistence and validity of the assignment or devolution of right by and between the parties. According to him, in the present, the registered sale Agreement of 2015 creates substantial right in favour of the third party. Undoubtedly there is no quarrel with the aforesaid proposition which is argued by Mr. Limaye. Any transferee *pendente lite*, if he satisfies his case of transfer to the satisfaction of the Court, undoubtedly can be impleaded as a party, but what is crucial for the Court to consider are the facts of each case which govern the right and obligations of the parties therein. The question that would have to be addressed by this Court in the present facts and circumstances is whether the third party herein can claim such an enforceable right of impleadment in the RCA proceeding. On the basis of the present facts, whether the ratio in the case of **Amit Kumar Shaw** (*first supra*) can be *ipso facto* applied to this case is the question to be answered by me. The answer to this question in my opinion has been clearly delivered by the learned Trial Court succinctly while giving its observations and findings in paragraph Nos.11 and 12 of the order dated 11.01.2024. For convenience paragraphs Nos.11 and 12 are reproduced hereinbelow:-

> *"11. The third party has nothing to do with the agreement which is sought to be enforce in the suit for specific performance of contract filed by the appellant. The dispute and the consequential reliefs is restricted to the enforcement of the agreement to sell entered between appellant and respondents. If the request of the third party is allowed then it would amount to enlarge the scope of the Appeal. It is well settled that necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order cannot be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. On this analogy, the third party is neither necessary or property party to be impleaded in the present proceeding. I have gone through the aforesaid citation. They are in respect of tranferee pendente lite.*
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> *12. It appears that the third party was well aware of the litigation as he has contested the proceeding. Apparently, he executed sale-deed in his own favour by himself bring power of attorney of land owner. Though he contends that the right and interest created in his favour in view of the sale-deed executed in his favour of the suit-land, however, the said cause*

> *is sheerely independent of the present proceeding. The grievance of the third party cannot be mixed in the instant proceeding. If the request of the third party is permitted then it may cause multiplicity of the proceeding. Thus, the claim of third party is misconceived and devoid of any substance. Eventually, the application is turn down. Hence, the following order.*
>
> *Order*
>
> *Application Exh.17 is rejected.*
> *Dictated and pronounced in open Court.*"

8. From the above, it is clear that the third party in the present case having has no nexus or privity of contract whatsoever with the agreement in respect of which specific performance was sought for by the Plaintiff before the Trial Court and which is now carried in appeal before the District Court. This is an admitted position. Though, it is the case of the third party had it is he who prosecuted the Suit proceedings as also the RCA, but that cannot be accepted because it was on behalf of Defendants as their constituted Power of Attorney. That apart the most crucial fact which distinguishes the present case from the decision in the case of **Amit Kumar Shaw** (*first supra*), is that the third party was clearly well aware of the entire litigation as he is the same person who not only contested the entire Suit proceeding but also filed RCA on behalf of Defendants. The fact that the third party executed the registered sale deed dated 04.11.2015 by himself and unto himself on the basis of the alleged Power of Attorney, which is informed to be cancelled by Defendants, itself revolts against his case. Aforesaid two distinguishing facts are such that the proposition argued by Mr. Limaye cannot be accepted for impleading the third party as transferee *pendete lite* in the present case. In fact the third party cannot be termed to be a *bonafide* purchaser for value at all. I need not travel any further insofar as the other decisions are concerned as they are on similar lines as the decision in the case of **Amit Kumar Shaw** (*first supra*), save and except, that what is required to be distinguished in the present case is the fact that the original Suit filed by Plaintiff is a Suit for specific performance of an agreement between the Plaintiff and the Defendants. The Supreme Court in the cases of **Kasturi Vs. Uyyamperumal and Ors.**[7], **Vidur Impex and Traders (P) Ltd. Vs. Tosh Apartment (P) Ltd.**[8] **and Gurmit Singh Bhatia Vs. Kiran Kant Robinson**[9] has already settled this position in law. The Supreme Court clearly holds that the situation would otherwise be different if in a given case it is the Plaintiff who makes an Application seeking impleadment of the subsequent purchaser for impleadment and the subsequent purchaser opposes such an Application for impleadment. This being the distinguishing feature in the present case needs to be considered and applied. In the present case, it is the subsequent purchaser, who is seeking impleadment to the detriment of the original

7 [2005(6) SCC 733].
8 [(2012) 8 SCC 384]
9 [(2020) 13 Supreme Court Cases 773].

owner/vendor of the property i.e. the Defendants.

9. In response to the submissions made by the third party, I would briefly refer to the submissions made by Mr. Kulkarni on behalf of the Plaintiff and Ms. Joshi, who has endorsed the said submissions on behalf of Defendant Nos.2 to 5. Mr. Kulkarni has placed before me certain dates which are relevant and are required to be stated herein. Mr. Kulkarni would submit that the Suit is filed on 17.02.1997 seeking specific performance of Agreement between Plaintiff and Defendants. He would admit the fact that on 17.09.2004, original Defendant Nos. 2 to 4 along with daughter of Original Defendant No.1 and wife of Respondent No.5 in the Writ Petition executed a registered irrevocable Power of Attorney in favour of the third party. That apart, on 25.05.2007, Respondent No.2 (A) in the present Petition also executed a separate registered irrevocable Power of Attorney in favour of the third party on the same lines as the previous Power of Attorney dated 17.09.2004. These are the two Power of Attorneys on the basis of which the third party has acted in furtherance thereof. He would submit that Special Civil Suit No.121 of 1997 was decreed in favour of Plaintiff on 04.07.2008. First Appeal was filed before the Division Bench of this Court on 16.10.2008 but admitted on 21.03.2009 and thereafter it was transferred to the District Court and is now pending before the District Court. It has been argued and informed by Ms. Joshi that on 12.02.2012, Defendants have cancelled the Power of Attorney dated 17.09.2004 executed by Defendants in favour of the third party. Necessary correspondence to that effect has already been addressed by their Advocate to the Advocate of Plaintiff and the third party and they have also received a response thereto from the Advocate of the third party. Thus this issue gets rested here and here itself. Once the Power of Attorney is cancelled in 2012 and it is to the clear knowledge of the third party then his covert act in the year 2015 to execute the sale agreement and append his own signature as Vendor and Purchaser both is an act of fraud. Hence in the facts and circumstances of the present case and the facts which have been delineated hereinabove and as informed by Ms. Joshi that the Power of Attorney dated 17.09.2004 was infact cancelled in the 2012, and consideration and market value of Rs.50,00,000/- stated in the Agreement as against the market value in excess of Rs.6 Crores, the execution and registration of the agreement dated 04.11.2015 is on the face of record a fraudulent step by the third party. Hence it is not a *bonafide* document.

10. Execution of such an agreement therefore does not support the Application for impleadment made by the third party which has been duly referred to while recording the submissions hereinabove and that is precisely the reason as to why I have used the word "cursorily" while reading the impleadment Application (*emphasis supplied*).

11. Mr. Kulkarni and Ms. Joshi, both have referred to and relied upon a decision of the Supreme Court in the case of **Gurmit Singh Bhatia** (*ninth supra*). The facts of this case are absolutely identical to the facts in the present case. In that case, the original Plaintiff filed Suit against Defendant No.1 seeking specific performance of an Agreement to sale for contract dated 03.05.2005 executed between the parties. Thereafter, during the pendency of the Suit proceedings and despite an injunction order against Defendant No.1 therein, the Defendants executed sale deed in favour of the third party by on 10.07.2008. The third party purchaser who purchased the Suit property during the pendency of the Suit proceedings filed Application seeking his impleadment under Order I Rule 10 of CPC as Defendant in the Suit proceeding. One distinguishing fact is that, apart from this judgment, all other judgments which have been cited at the bar by the parties are in respect of seeking impleadment at the stage of the trial and none of the judgments except in the case of **Amit Kumar Shaw** (*first supra*) concerns impleadment at the stage of second appeal. Just as what is referred to hereinabove in the facts of that case, the present situation is identical and similar. In the present case, my attention is drawn by Mr. Kulkarni to the order dated 21.03.2009 which is appended at page No.91 wherein while admitting the First Appeal filed by Defendants, execution of the impugned decree is stayed which clearly implies that only execution is stayed but the injunction which was granted, was never stayed and therefore, the injunction continued. In the wake of such injunction having been continued, the third party in the present case despite having complete knowledge executed the registered sale deed dated 04.11.2015 purportedly by himself being the Purchaser and purportedly on behalf of the Defendants being the sellers. In this regard, the Supreme Court in the case of **Gurmit Singh Bhatia** (*ninth supra*) while referring to the decision in the case of **Kasturi** (*seventh supra.*) has clearly returned a categorical finding, which applies to the facts in the present case. The Supreme Court holds that during the pendency of a Suit, when an injunction against the original vendor/owner, restraining him from transferring and alienating the Suit property is pending and if the vendor executes any sale deed in favour of the third party, in such a case, the question which is posed for consideration is whether the Plaintiff can be compelled to implead the third party in the Suit for specific performance against his wish and more particularly, with respect to the third party, against whom no relief has been claimed by the Plaintiff. Such is the situation in the present case. The Plaintiff seeks no relief whatsoever against the third party. The Supreme Court in paragraph No.5 of the said decision in **Gurmit Singh Bhatia's** case (*ninth supra*) has framed the aforesaid question in the facts of that case and answered the same in detail in paragraph No.5 onwards. For the sake of reference and convenience, paragraph No.5 is reproduced hereinbelow and it reads thus:-

> "*5. We have heard the learned counsel for the respective parties at length.*
>
> *5.1. At the outset, it is required to be noted that the original plaintiffs filed the suit against the original owner- vendor- original Defendant 1 for specific performance of the agreement to sell with respect of suit property dated 3-5-2005. It is an admitted position that so far as agreement to sell dated 3-5-2005 of which the specific performance is sought, the appellant is not a party to the said agreement to sell. It appears that during the pendency of the aforesaid suit and though there was an injunction against the original owner – vendor restraining him from transferring and alienating the suit property, the vendor executed the sale deed in favour of the appellant by sale deed dated 10-7-2008. After a period of approximately four years, the appellant filed an application before the learned trial court under Order 1 Rule 10 CPC for his impleadment as a defendant. The appellant claimed the right on the basis of the said sale deed as well as the agreement to sell dated 31-3-2003 alleged to have been executed by the original vendor. The said application was opposed by the original plaintiffs allowed the said application which has been set aside by the High Court by the impugned judgment and order*

1[Satya Dev Pandey v. Kiran Kant Robinson, Writ Petition No. 856 of 2012, order dated 3-7-2013 (Chh). Thus, it was an application under Order 1 Rule 10 CPC by a third party to the agreement to sell between the original plaintiffs and original Defendant 1 (vendor) and the said application for impleadment is/was opposed by the original plaintiffs. Therefore, the short question which is posed for consideration before this Court is, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him?

5.2. An identical question came to be considered before this Court in Kusturi 5 [Kasturi v. Iyyamperumal, (2005) 6 SCC 733] 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 unelss 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 a right to some relief against such party in respect of the controversies involved iin 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 an 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 a 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.

5.3. In paras 15 and 16, this Court observed and held as under:

(Kasturi case 5, SCC pp. 741-42, paras 15-16)

"15. As discussed hereinearlier, 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 hereinearlier, 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 Respondent 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 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 hereinearlier 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 permission in law. In Vijay Pratap v. Sambhu Saran Sinha 6 [(1996) 10 SCC 53] 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 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 ind 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 hereinearlier, 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 No.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 hereinearlier, 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 Contract in Kasturi v. Iyyamperumal, (2005) 6 SCC 733 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. In the aforesaid decision in Kasturi(supra.), it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can

> *be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in a suit for specific performance of the contract to sell the lis between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is laso not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property.*
>
> *5.5. It is further observed and held by this Court in Kasturi (supra.) 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 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 (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 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.*"

12. From the above, it is clear that after referring to the decision in the case of **Kasturi** (*seventh supra*), there can be no quarrel on the proposition that if the third party is impleaded and added in the present proceedings as it is the case, it would enlarge the scope of the Suit of specific performance to a Suit for title and possession, which is clearly impermissible in law. Such is the imprimatur of the Supreme Court which is clearly reflected while answering the aforesaid question in paragraph No.5.2 in the aforesaid decision. There can be no different opinion or finding that can be expressed by me as the said decision clearly covers the facts of the present case and is binding on me. The third party's conduct in the present case also needs to be taken note of and considered. Herein is the case of a third party before the Court whose Power of Attorney was terminated by Defendants in the year 2012. He was having complete knowledge of the same. Despite which he executes and registers an Agreement surreptitiously by appending his own signature as Vendor and Purchaser on the basis of a cancelled and terminated Power of Attorney and then claims to be the owner of the property as transferee *pendente lite*. The consideration of Rs.50,00,000/- only in the Agreement, when the market value of the property itself is Rs.6,00,10,000/- shows the *malafides* of the third party. That apart, the delay is also clearly evident on the face of record. The Application seeking impleadment is filed only after a long hiatus in the year 2023 i.e. on 24.02.2023. The conduct of such a third party is also clearly exemplified by the Supreme Court in the decision of **Vidur Impex & Traders (P) Ltd.** (*eight supra*) in paragraph No.41, where the Supreme Court lays down principles governing impleadment of a party. That apart Mr. Limaye has referred to the applicability of the provisions of Order XXII Rule 10 of the CPC. However the same would not directly apply and aid and assist the third party in the present case. The submission made by Mr. Limaye is that Application under Order XXII Rule 10 of the CPC can be made at any point of time since it does not prescribe any limitation. One thing should be remembered by all litigants is that when any statute does not prescribe any limitation, the degree of reasonableness is implied and facts and circumstances of the case govern the rights of the parties. In the present case the conduct of the third party as observed hereinabove and when juxtaposed with the principles for impleadment laid down in paragraph Nos.41.5 read with 41.6 of the decision in **Vidur Impex & Traders (P) Ltd.** (*eight supra*), I am inclined to impose costs, rather exemplary costs on the third party who is the Petitioner before me. This is only to ensure that such third parties who indulge in acts over a period of time to the detriment of the litigating parties without exercising their rights in accordance with law, are to be dealt with strictly.

13. Hence, I am inclined to impose exemplary costs of Rs.50,000/- (Rupees Fifty Thousand Only) on the third party to be paid to the Kirtikar Library, High Court, Mumbai, Appellate Side within a period of four weeks from the date of uploading of this Judgment. If not paid, the Collector of Nashik is directed to recover the said costs as arrears of land revenue from the third party and pay the same to the beneficiary. The order dated 11.01.2024 is sustained and upheld.

14. Writ Petition is dismissed.

(MILIND N. JADHAV, J.)

RAVINDRA MOHAN AMBERKAR Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2024.09.21 18:23:54 +0530