

**HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**

**C.R.P.No.1321 of 2015**

**ORDER:**

This Civil Revision Petition is filed by the petitioners/proposed parties under Article 227 of the Constitution of India against the orders passed by learned Senior Civil Judge, Razole, in I.A.No.568 of 2014 in O.S.No.31 of 2005 wherein and whereby learned trial Judge dismissed the petition filed by the petitioners/proposed parties under Order 1 Rule 10 read with Section 151 of Civil Procedure Code to implead them as defendants 13 to 16 in the suit filed by the first respondent/plaintiff.

2. The case of the petitioners before the trial Court in brief is that they are third parties in the proceedings and they are well acquainted with the facts of the case. They submit that first petitioner purchased an extent of Ac.0.80 cents in R.S.No.76/1 of Tatipaka under registered sale deed dated 10.08.2009 from T.Venkateswara Rao (R5/D4). It is the contention of the petitioner that after purchase of site by the first petitioner from R5/D4, she sold 0.04 cents of site to the first petitioner under registered sale deed dated 27.04.2011 and thereafter, the first petitioner also sold

734 cents to the 2<sup>nd</sup> petitioner under registered sale deed dated 13.06.2011. They further submit that the first petitioner sold another Ac.0.25 cents to one Rekapalli Tataji under registered sale deed dated 02.04.2011, who in turn sold Ac.0.07¾ cents to third petitioner under registered sale deed dated 13.06.2011 and thereafter, the said Tataji also sold Ac.0.16 cents to fourth petitioner under registered sale deed dated 07.03.2013. The main contention of the petitioners is that they being *bona fide* purchasers for valuable consideration of portion of plaint schedule property are proper and necessary parties to the suit. They pray to implead them as defendants 13 to 16.

3. For which, first respondent/plaintiff filed counter before trial Court denying the averments in the affidavit of the petitioners/proposed parties. It is the contention of the first respondent/plaintiff that petitioners are not *bona fide* purchasers and they have got knowledge about the pendency of the suit, but purposefully and intentionally entered into litigation and filed the petition with a view to delay and drag on the proceedings. He submits that suit is coming up for arguments after closure of evidence on both sides and then petitioners came up with this

petition by creating documents in their favour, which are during the pendency of the suit, which is hit by Section 52 of Transfer of Property Act.

He prays to dismiss the petition.

4. After hearing both sides, the learned trial Judge dismissed the petition filed by the petitioners by observing that petitioners have purchased suit schedule property subsequent to suit agreement of sale dated 22.10.1999, which is also subsequent to filing of the suit, thereby dismissed the petition.

5. Aggrieved by the orders passed by learned trial Judge, proposed defendants have filed present revision petition stating that orders passed by trial Court are contrary to law and probabilities of the case. They submit that they are proper and necessary parties for effective adjudication of the matter, which the learned trial Judge failed to consider. It is the contention of the revision petitioners that they are *bona fide* purchasers for valuable consideration and D4, who lost interest in the plaint schedule property may not contest the suit in a proper manner, due to that they want to come on record.

They pray to allow the civil revision petition.

6. I have heard both sides.

7. The learned counsel for the revision petitioners would submit that petitioners being *bona fide* purchasers for valuable consideration are proper and necessary parties to be added as defendants in the suit filed by first respondent/plaintiff seeking for specific performance of contract.

He prays to allow the Civil Revision Petition.

8. The learned counsel for respondents would submit that admittedly petitioners are purchasers of portion of plaint schedule property during the pendency of the suit, due to that they are not proper and necessary parties in view of doctrine of *lis pendence*. He would further submit that the first respondent/plaintiff is *dominus litis* and he cannot compel to file suit against the person against whom he did not want to contest. He relied on following precedent law:

**1. Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Others<sup>1</sup>**, wherein it is held that subsequent transferee of suit property cannot be allowed to be impleaded as parties of the suit

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<sup>1</sup> (2020) 13 SCC 773

against wishes of plaintiff, who filed suit for specific performance. It would be beneficial to quote paras 5.5 and 5.6 of the said decision, which reads as under:

*“5.5. It is further observed and held by this Court in Kasturi’s case 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.”*

9. Now, the issue that emerges for consideration by this Court is: ***"Whether the orders under challenge are sustainable, tenable and whether the same warrants any interference of this Court under Article 227 of Constitution of India?"***

10. **POINT:** Before going to the merits of the case, it would be beneficial to quote Order 1 Rule 10 CPC, which reads as under:

**"10. SUIT IN NAME OF WRONG PLAINTIFF.**

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) **Court may strike out or add parties-** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian [Limitation Act](#), 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

11. The general rule is that a plaintiff is the *dominus litis* and may choose the persons against whom he wishes to litigate and cannot be forced to sue a person against whom he does not seek any relief. Hence a person, who is not a party, has no right to be impleaded against the wishes of the plaintiff unless it is a compulsion of the rule of law. Though this general rule of plaintiff being the *dominus litis* is subject to the provisions of Order I Rule 10(2) of CPC when the trial Court extended discretion and refused to entertain the petition filed by the petitioners on the ground that they are subsequent purchasers during the pendency of the suit,

which cannot be find fault with. The Hon'ble Apex Court in *Kasturi v. Iyyam Perumal*<sup>2</sup> relied on by Hon'ble Apex Court in *Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others*' case (referred supra) evolved two tests to be satisfied for determining whether a person is a necessary party (1) There must be a right to some relief against such party in respect of the controversies involved in the proceedings, (2) No effective decree can be passed in the absence of such party. Even what makes a person a necessary party is not merely that it has an interest in the correct solution of some questions involved in the litigation or has some legal contentions to advance or has evidence to give on any of the questions involved. Moreover, a person whose object is to prosecute its own cause of action or who the defendant wants to prosecute cannot be joined for merely that reason. The phrase "all the questions involved" means only the 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 arrive between the plaintiffs inter se, or between the defendants inter se, or between the plaintiffs and third parties or between the defendants and third parties. The main object of impleadment of

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<sup>2</sup> (2005) 6 SCC 733



a party is not to prevent multiplicity of proceedings although it is also one of the objects. Therefore, impleadment cannot be permitted solely on this ground de hors the aforesaid principles in regard to necessary or proper party.

12. In ***Sudhamayee Pattnaik and Others Vs. Bibhu Prasad Sahoo and Others***, in Civil Appeal No.6370 of 2022 judgment dated 16.09.2022 the Hon'ble Apex Court reiterating the principles laid down in ***Kasturi v. Iyyam Perumal's*** case (referred supra) held at Para - 5, which reads as under:

*“At the outset, it is required to be noted that defendants in the suit filed application under Order 1 Rule 10 CPC and prays to implead the subsequent purchasers as party defendants. The suit for declaration, permanent injunction and recovery of possession. As per settled position of law, the plaintiffs are dominus litis. Unless the Court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wishes of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiff shall be at the risk of the plaintiff. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants that too against the wish of the plaintiff.”*

13. In the present case, as seen from the affidavit filed by the petitioners in support of their petition, wherein they have categorically mentioned that they are subsequent purchasers of portion of plaint schedule property during the pendency of the suit, they intended to come on record as party defendants and prayed to implead them as defendants 13 to 16 in the suit, which was opposed by first respondent/plaintiff. In those circumstances, learned trial Judge rightly dismissed the petition filed by the petitioners by passing detailed reasoned order relying on precedent law. This Court did not find any illegality or irregularity in the orders passed by the learned trial Judge warrants interference of this Court under Article 227 of Constitution of India.

14. In the result, this Civil Revision Petition is dismissed with costs. Consequently, miscellaneous petitions pending if any, shall stand closed. Interim orders if any granted earlier, are hereby stand vacated.

**BANDARU SYAMSUNDER, J**

**Dt:18.10.2022.**

Rns

**HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**

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**Date: 18.10.2022**

**Rns**