CASE NO.:
Appeal (civil) 2831 of 2005

PETITIONER:
Kasturi

RESPONDENT:
Uyyamperumal & Ors.

DATE OF JUDGMENT: 25/04/2005

BENCH:
N.SANTOSH HEGDE, TARUN CHATTERJEE & P.K.BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Civil ) No. 4235/2003)

TARUN CHATTERJEE, J.

Leave granted.

The only question that needs to be decided in this case is whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, is entitled to be added as a party/defendant in the said suit.

2. Before we take up this question for decision in detail, the material facts leading to the filing of this case may be narrated at a short compass. The appellant herein has filed the suit against the respondent Nos.2 and 3 for specific performance of a contract entered into between the second respondent acting as a Power of Attorney of the third respondent on one hand and the appellant on the other for sale of the contracted property. In this suit for specific performance of the contract for sale, the respondent Nos.1 and 4 to 11, who were admittedly not parties to the contract and setting up a claim of independent title and possession over the contracted property, filed an application to get themselves added in the suit as defendants. The trial court allowed the application on the ground that as the respondent Nos.1 and 4 to 11 were claiming title and possession of the contracted property, they must be held to have a direct interest in the subject-matter of the suit, and therefore, entitled to be added as parties defendants in the suit as their presence would be necessary to decide the controversies raised in the present suit. The High Court in revision confirmed the said order and accordingly against the aforesaid order of the High Court this Special Leave Petition was filed at the instance of the appellant which on grant of special leave was taken up for hearing in presence of the parties.

3. In order to decide the question, as framed hereinearlier, it is necessary to consider the relevant provisions of the Code of Civil Procedure (in short the CPC )under which the Court is empowered to add a party in the suit. However, our answer to the question framed, as raised by the learned counsel for the parties, is that the High Court as well as the trial court had acted illegally in the exercise of their jurisdiction in allowing the application of the respondent Nos.1 and 4 to 11 for their addition as defendants in the suit. There are certain special statutes which clearly provide as to who are the persons to be made as parties in the proceeding/suit filed under that special statute. Let us take the example of the provisions made under the Representation of People Act. Section 82 of the aforesaid Act clearly provides who are the persons to be made parties

in Election Petitions. There are other special statutes which also postulate who can be joined as parties in the proceedings instituted under that special statute, otherwise the provisions of the CPC should be applicable. So far as addition of parties under the CPC is concerned, we find that such power of addition of parties emanates from Order 1 Rule 10 of the CPC. As we are concerned in the instant case with order 1 Rule 10 of the CPC, we do not find it necessary to refer to other provisions of the CPC excepting Order 1 Rule 10 of the CPC which reads as under:

Rule 10.(1) "Where a suit has been instituted in the name of the wrong persons 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 through 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) 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)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

(4)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005.

(5)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005"

(Omitted since not necessary )

4. In deciding whether a stranger or a third party to the contract is entitled to be added in a suit for specific performance of contract for sale as a defendant, it is not necessary for us to delve in depth into the scope of Order 1 Rule 10 sub-rule (1) of the CPC under which only the addition of a plaintiff in the suit may be directed.

5. Let us therefore confine ourselves to the provision of Order 1 Rule 10 sub-rule (2) of CPC which has already been quoted hereinabove. From a bare perusal of sub-rule (2) of Order 1 Rule 10 of the CPC, we find that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person 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. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of sub-rule(2) Order 1 Rule 10 of the CPC empowers the Court to add a person who ought to have been joined 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.

6. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the

contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (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.

7. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, 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. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.

9. 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.

10. As noted hereinearlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker Vs. Small 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to

the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

[Emphasis supplied ]

11. The aforesaid decision in 40 E.R. 848 was noted with approval in (1886 ) 2 Ch. 164 (De Hogton v. Money ) at page 170 Turner, L.J. observed:

"Here again his case is met by (1834) 40 E.R. 848 in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed."

12. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

13. Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos.1 and 4 to 11 are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos.2 and 3. In the case of Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru, reported in 1995(3) SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at paragraph 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

"Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party." [Emphasis supplied]

14. As discussed hereinearlier, whether respondent Nos.1 and 4 to 11 were proper parties or not, the governing principle for

deciding the question would be that the presence of respondent Nos.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 the respondent Nos.2 and 3 and whether contract was executed by the appellant and the respondent Nos.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 the respondent Nos.2 and 3. It is an admitted position that the respondent Nos.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 hereinearlier that in the event, the respondent Nos.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 & Ors. Vs. Sambhu Saran Sinha & Ors. reported in 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 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 the respondent Nos.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 the respondent Nos.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 the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.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 the respondent Nos.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, the respondent Nos.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 the 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 the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 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 & 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 the contracted property and in view of the detailed discussion made hereinearlier, 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.

16. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would not be open to the Court to decide the question of possession of a third party/ or a stranger as first the lis to be decided is the enforceability of the contract entered into between the appellant and the respondent No. 3 and whether contract was executed by the appellant and the respondent Nos.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 the respondent Nos.2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In Amol Vs. Rasheed Tuck and Sons Ltd. [1956(1) All Eng.Reporter, 273] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will effect him legally.

17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

18. The learned counsel appearing for the respondent Nos.1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos.1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of respondent Nos.1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinearlier, including the scope of the suit, we are of the view that it lacks merit. 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 for sale because the respondent Nos.1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against the respondent No.3 to the contract. In our view, the third party to the agreement for sale without challenging the title of the respondent No.3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the

contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.

19. It was also argued on behalf of respondent Nos. 1 and 4 to 11 that to avoid multiplicity of suits it would be appropriate to join the respondent Nos. 1 and 4 to 11 as party-defendants as the question relating to the possession of the suit property would be finally and effectively settled. In view of our discussions made hereinabove, this argument also which weighed with the two courts below has no substance. In view of the discussions made hereinearlier, the two tests by which a person who is seeking addition in a pending suit for specific performance of the contract for sale must be satisfied. As stated hereinearlier, first there must be a right to the suit property for the same relief against a party relating to the same subject-matter involved in the proceedings for specific performance of contract for sale, and secondly, it would not be possible for the Court to pass effective decree or order in the absence of such a party. If we apply these two tests in the facts and circumstances of the present case, it would be evident that the respondent Nos.1 and 4 to 11 cannot satisfy the above two tests for determining the question whether a stranger/third party is entitled to be added under Order 1 Rule 10 of the CPC only on the ground that if the decree for specific performance of the contract for sale is passed in absence of respondent Nos. 1 and 4 to 11, their possession over the contracted property can be disturbed or they can be dispossessed from the contracted property in execution of the decree for specific performance of the contract for sale obtained by the appellant against respondent Nos 2 and 3. Such being the position, in our view, it was not open to the High Court or the trial court to join other cause of action in the instant suit for specific performance of the contract for sale, and therefore, the two Courts below acted illegally and without jurisdiction in allowing the application for addition of parties in the pending suit for specific performance of contract for sale filed at the instance of respondent Nos. 1 and 4 to 11. The Learned counsel for the respondent Nos. 1 and 4 to 11 however urged that since the two courts below had exercised their jurisdiction in allowing the application for addition of parties, it was not open to this Court to interfere with such order of the High Court as well as of the trial court. We are unable to accept this contention of the Learned counsel for the respondent Nos. 1 and 4 to 11. As discussed hereinearlier, it is open to the Court to interfere with the order if it is held that two courts below had acted without jurisdiction or acted illegally and with material irregularity in the exercise of their jurisdiction in the matter of allowing the application for addition of parties filed under Order 1 Rule 10 of the CPC. The question of jurisdiction of the Court to invoke Order 1 Rule 10 of the CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct interest in the controversy involved in the suit. Can it be said that the Respondent Nos.1 and 4 to 11 had any direct interest in the subject-matter of the instant suit for specific performance of the contract for sale? In our view the Respondent Nos. 1 and 4 to 11 had no direct interest in the suit for specific performance because they are not parties to the contract nor do they claim any interest from the parties to the litigation. One more aspect may be considered in this connection. It is that the jurisdiction of the court to add an applicant shall arise only when the Court finds that such applicant is either a necessary party or a proper party.

20. It may be reiterated here that if the appellant who has filed the instant suit for specific performance of contract for sale even after receiving the notice of claim of title and possession by the respondent Nos. 1 and 4 to 11 does not want to join the respondent Nos. 1 and 4 to 11 in the pending suit, it is always done at the risk of the appellant because he cannot be forced upon to join the respondent

Nos 1 and 4 to 11 as party- defendants in such suit. In the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors. 1992(2) SCC 524, on the question of jurisdiction this Court clearly has laid down that it is always open to the court to interfere with an order allowing an application for addition of parties when it is found that the courts below had gone wrong in concluding that the persons sought to be added in the suit were necessary or proper parties to be added as defendants in the suit instituted by the plaintiff appellant. In that case also this Court interfered with the orders of the courts below and rejected the application for addition of parties. Such being the position, it can no longer be said that this Court cannot set aside the impugned orders of the courts below on the ground that jurisdiction to invoke power under Order 1 Rule 10 of the CPC has already been exercised by the two courts below in favour of the respondent Nos. 1 and 4 to 11.

21. For the reasons aforesaid, in our view, the stranger to the contract, namely, the respondent Nos. 1 and 4 to 11 making claim independent and adverse to the title of respondent Nos. 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party defendants in the suit for specific performance of contract for sale.

22. The judgments and orders of the High Court and the trial court are therefore liable to be set aside. The impugned orders are thus set aside and the application for addition of parties filed at the instance of respondent Nos. 1 and 4 to 11 stands rejected. The appeal is thus allowed. We, however, make it clear that we have not decided in this judgment as to the title and possession of respondent Nos. 1 and 4 to 11 of the suit property and all such questions are kept open in the event any approach is made either by the respondent Nos. 1 and 4 to 11 or by the appellant in any appropriate court.

23. There will be no order as to costs.