

ORDERS ON I.A.NO-I

This is an application filed by the applicants/proposed defendant No. 2 to 4 under Order 1 Rule 10(2) of C.P.C., for seeking permission to come on record as defendant No. 2 to 4.

2. The applicant namely Sri.K.S.Devaraju S/o Late Sanna Ningegowda in his affidavit accompanying to this I.A has stated that plaintiff has filed present suit for Specific Performance of Contract. The applicants have filed suit in O.S. No. 516/2012 on the file of Hon'ble Prl. Civil Judge and JMFC, K.R.Pete for Declaration and also for partition. The suit schedule property of this suit is 'C' schedule property measuring 1 acre 9.08 guntas in the said suit. They have filed application U/order 39 Rule 1 and 2 of CPC to restrain the defendants and their agents and servants from alienating the suit schedule property of that suit. Said application was allowed on 26.07.2016 and on 28.04.2017. Thereafter, suit was dismissed on 04.03.2023, against said judgment and decree they have preferred an appeal in RA No. 27/2023 on the file of Hon'ble Senior Civil Judge and JMFC

K.R.Pete which is pending for adjudication.

3. The plaintiff has filed present case based on agreement of sale dated 09.11.2022 said to have been executed by the defendant in respect of the 'C' suit schedule property in O.S. No. 516/2012. If this suit is decreed than it leads multiplicity of proceedings. Hence, in order to avoid multiplicity of proceedings their presence is necessary. Hence, they pray for allow the application.

4. On the other hand plaintiff has filed objection and contended that, application filed by the applicants is not maintainable as the suit is for specific performance of contract based on sale agreement. The defendant has executed the sale agreement in favour of plaintiff. The applicants are the strangers to the sale agreement. Hence, they are not necessary parties or proper parties to the suit to determine the matter in dispute. Our Hon'ble High Court of Karnataka has clearly held that a 3rd party can not be impleaded in a suit for specific performance. Hence, application filed by the applicants is not maintainable and liable to be dismissed.

4. Heard arguments. Perused the documents placed on record.

5. The following points arise for the consideration of this Court;

1. Whether the applicants show that their presence is necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the present suit?

2. What Order?

6. My findings on the above points are as follows:

Point No.1 : **In the Negative**

Point No.2 : **As per the final order**
for the following;

REASONS

7. **Point No.1:-** The plaintiff has filed present suit for Specific Performance of Contract.

8. It is the case of the plaintiff that defendant is the owner of the property bearing Sy. No. 197/2 measuring 12 guntas of K.R.Pete village, Kasaba hobli, K.R.Pete taluk. He has executed agreement of sale on 09.11.2022 by agreeing to sell the suit schedule property for valid consideration amount of Rs.15,00,000/-. Thereby he has received Rs.10,00,000/- as earnest amount. As per the agreement of sale he fails to

perform his part of contract. Hence, he has filed present suit.

9. The applicants have contended that, they have filed suit in O.S. No.516/2012. This suit schedule property is involved in the said suit as 'C' schedule property. Hence, they are the necessary parties to the suit in order to avoid multiplicity of proceedings. Learned counsel for the applicant has furnished RTC extracts and order passed in O.S. No.516/2012. On perusal of the said documents it appears that katha of the suit schedule property is standing in the name of defendant herein. Further it appears that the Hon'ble Civil Judge and JMFC court has passed temporary injunction order on 26.07.2016 and 28.04.2017. It is the case of the applicants that the defendant has entered into agreement of sale during the course of temporary injunction order. Hence, they are necessary parties. It is well settled that if a party purchased the property during the course of temporary injunction order said sale deed become void ab initio. In case on hand defendant has not executed the sale deed. Hence, mere execution of the agreement is not confer title to the plaintiff over the property. On perusal of the record it

appears that after disposal of the suit the plaintiff has filed present suit.

10. The plaintiff has furnished agreement of sale dated 09.11.2022, said to have been executed by the defendant. Admittedly, applicants are not signatories to the said agreement of sale. The plaintiff has filed present suit for Specific Performance of Contract based on the agreement of sale dated 09.11.2022. Hence, plaintiff can not invoke agreement of sale who is not parties to the agreement of sale. It is relevant to note here decision reported in **ILR 2005 KAR 2475 (SC)** (between **Kasturi V/s Iyyamperumal and Others**) wherein Hon'ble Supreme Court of India at para No. 18 to 21 has held that,

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 hereinafter, 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 added 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 the 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 herein earlier, 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 herein earlier, 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 hereinafter, 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 v. 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.

12. As per the ratio laid down by the Hon'ble Supreme Court of India 3rd party who claiming independent title and possession over the agreement property is neither necessary nor proper party to the suit. In case on hand also the applicants are not neither signatories or RTC holders of the property. Under such circumstance they neither necessary parties nor proper parties. Mere pending of the appeal itself is not enough to implead themselves as parties to this suit as they are not signatories to the sale agreement. Hence, presence of the applicants is not necessary to ensure that all matters in dispute are effectively or completely determined. In the absence of the applicants court is able to pass a decree effectively. Hence, court of the opinion that presence of the applicants is not necessary in order to enable the court effectually and

completely to adjudicate upon and settled all the questions involved in the suit. Accordingly, I answer point No. 1 in the **Negative.**

13. **Point No.2:** In view of my above discussions, I proceed to pass the following;

ORDER

I.A. No.I filed by the applicants under Order 1 Rule 10(2) of C.P.C is hereby dismissed with cost.

For plaintiff evidence by: 11.11.2025.

I Addl. Sr.CJ & JMFC,
K.R.Pete.