

**Spl.Civil Suit No.5/2013**  
**Order below Exh.69**

This is the application filed by the plaintiff for amendment of the suit under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure inter-alia on the contention that plaintiff filed the present suit for relief of specific performance of the contract and also for injunction. While suit was pending defendant no.1 illegally sold the suit property and the purchaser has taken loan of Rs.13,25,000/- by mortgaging the suit property. In such circumstances, it is necessary to add the purchasers Suraj Rohile as defendant no. 5 in the present suit who is necessary party and required the consequent amendment in the pleading. As after receipt of the notice defendant no.3 appeared in the present suit inspite of that defendant no.1 agreed to sell the suit property to the plaintiff having preferential right to purchase the suit property. Defendant no.3 illegally sold the suit property to defendant no.5 on 21-5-2015 by virtue of which he shall not get any right, title and interest in view of the principle of lis pendense as the plaintiff has registered the lis pendense vide registration no..1721 dated 14-2-2013 and therefore the sale executed in favour of defendant no.5 by defendant no.3 is not binding on the plaintiff. In such circumstances, there shall be no change in the nature of the suit if defendant no.5 is added in the present suit and incorporated amendment in the present suit. Hence prayed to allow the application.

02. Defendant no.3 resisted application by filing say Exh.75 interalia on the contention that infact no notice was issued to Suraj Rohile and without hearing him it is not proper to add him in the present suit otherwise complications will be arises. Plaintiff has no right to seek the relief by proposed amendment, therefore, application ought to be rejected.

03. Defendant no.1 also resisted application by filing say Exh.77 on contention that without hearing the Suraj Rohile, he cannot be added in the present suit. If he is added in the present suit, complications will be arises. Plaintiff has no right to seek the relief of declaration as prayed by proposed amendment. Hence prayed to reject the application.

04. Perused application, say filed by other side. Heard the learned counsel for both the parties. It appears that while suit was pending defendant no.1 had sold the suit property to defendant no.3 and defendant no.1 has taken the loan by mortgaging the property to defendant no.4 and therefore plaintiff had filed the application dated 5-7-2014 to add defendant no.3 and 4 in the present suit who are the subsequent purchaser which was rejected by Joint Civil Judge, Jr.Dn., Ichalkaranji which was challenged by plaintiff by filing Writ Petition no.22550/14 before the Hon'ble High

Court Bombay. Hon'ble Bombay High Court by order dated 25-3-2015 allowed the application and thereby directed to add defendant no.3 and 4 in the present suit observing that subsequent purchaser in the suit for specific performance, is necessary party by relying upon the judgment in the case of Shri.Kamal Construction and others Vs. Kamalakar Jivan Patil and others, reported in 2013(4) AIR (Bom) R 348. It is also held that "even it is not necessary to give notice to subsequent transferee when he is necessary party to add in the present suit under Order 1 Rule 10 of the C.P.C."

05. In the present suit it is the specific contention of learned counsel for defendant is that in the suit for specific performance of the contract third party are not necessary parties and only the parties to agreement are the necessary parties and therefore application for addition of the third party in the present suit is not maintainable. To buttress he relied upon the judgment in the case of Kasturi Vs. Iyyamperumal and Ors., reported in AIR 2005 S.C. 2813. Wherein Hon'ble Apex Court observed that -

"Third party was stranger to the agreement who is claiming independent title and possession over the contracted property are not necessary party in the suit for specific performance of the contract. It is, however, material to note that in para no.6 of the said judgment, the Hon'ble Apex Court

observed that, “ a bare reading of this provision viz 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 or without notice of the contract but a person who claims adversely to the claim of a vendor is, however, not a necessary party”.

06. It is very material to note that in the case of Thomson Press (India) Ltd., Vs. Nanak Builders & Investors. Pvt.Ltd., reported AIR 2013 S.C.2389, wherein in this suit Nanak Builder who is the respondent filed the suit for specific performance of the agreement against one Sawhenys owner of the property known as Oza House/Sawhney Mansion. In the mean time suit property was leased by defendant to one Living Media India Limited (in short LMI). After receiving the notice inform Court that possession is with LMI. Defendants have also taken loan from Vijaya Bank by mortgaging the property. The said Vijaya Bank filed suit for redemption of mortgage against the revision. However, the said amount cleared all the dues. Finally in between

31-01-2001 and 3-4-2001 five sale deeds were executed by Sawhney in favour of present appellant Thomson Press India Ltd., Hence appellant moved an application under Order 1 Rule 10 CPC for impleadment as defendants in the suit. Hon'ble High Court rejected application on the ground that there was an injunction order passed on 4-1-2001 restraining defendant from transferring or alienating the suit property. Hence, appellant filed appeal before the Division Bench who also affirms the order of single judge. Hence aggrieved by order, appellant filed present Spl.Leave Petition. Hence the question arises whether the appellant who is transferee pendent lite having notice and knowledge about pending of the suit and order of injunction can be impleaded as party under Order 1 Rule 10 of C.P.C on the basis of sale deed executed in favour. Hon'ble Appellant Court after considering the provision of Sec.52 of Transfer of Property Act, Order 1 Rule 10 of C.P.C and also section 19 of the Specific Relief Act held doctrine of lis pendense does not annul the transaction made during the pendency of the lis. It merely made such transaction subject to right of the party to the suit. In specific performance of contract, subsequent purchaser of the property with knowledge of earlier agreement can be added as party. The transfer of property is made in teeth of injunction prohibiting transfer not void".

07. Hence considering the over all discussions made

above, according to me, in the present case, the transferee pendente lite Suraj Rohile is necessary party and required to be added in the present suit with consequent pleading. Resultantly I proceed to pass the following order -

**Order**

1. Application is allowed.
2. Plaintiff to carry out the amendment within the period of 14 days.
3. No order as to costs.

Sd/-  
(U.T.Pol)  
Civil Judge, Sr.Dn.,Ichalkaranji

Date : 5-12-2015

“I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original Judgment/Order”.

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|----------------------------|-------------|
| Name of Stenographer       | A.S.Gaikwad |
| Name of Court              | U.T.Pol     |
| Date of Dictation          | 3-12-2015   |
| Order signed by the P.O.on | 5-12-2015   |
| order uploaded on          | 5-12-2015   |