

**ORDER BELOW EXH.124 IN R.C.S.No.133/2012****(Sagar Yallappa Koli and ors v. Sagar Ramu Aambi and ors.)**

The third party applicant namely Sangita Ramesh Aambi has filed present application under Order I Rule 10 of the Code of Civil Procedure (in short 'the CPC').

02. The applicant contended that, she is a sister of deceased defendant No.1. The suit property is ancestral and joint family property of herself and defendant No.1. She is having her undivided share in the suit property. There is a dispute between herself and defendant No.1 in respect of the suit property. In order to deny share of the applicant in the suit property, defendant No.1 has entered into transaction with plaintiffs in respect of the suit property without any legal necessity. Hence, transaction between plaintiffs and defendant No.1 in respect of the suit property is not binding upon the applicant. The applicant is having share and interest in the suit property. Hence, she is necessary party in the present suit. If she is impleaded in the present suit, no prejudice would be caused to plaintiffs. On the contrary, if she is not impleaded in the present suit, she will suffer with irreparable loss. Hence, the applicant prayed that, plaintiffs may be directed to implead the applicant in the present suit.

03. Plaintiffs have strongly resisted present application by filing their say vide Exh.126. They contended that, defendant No.1 has executed an agreement to sale in respect of the suit property in favour of plaintiffs on 25/01/2011 after receiving consideration amount of rupees five lacs from plaintiffs. Since then, plaintiffs are in possession of the suit property.

04. It is further contended that, the applicant and her sister namely Sou. Ujwala Mahadev Aambi have executed registered relinquish-deed bearing No.2619 in favour of defendant No.1 in respect of ancestral properties on 25/05/2011. Hence, the applicant is not having any share and interest in the suit property. Since execution of relinquish-deed, the applicant has not taken any objection against said relinquish-deed. Per contra, in order to deny execution of sale-deed of the suit property in favour of plaintiffs, the applicant has filed present application in collusion with defendants. Hence, plaintiffs prayed that, the application may be rejected with costs of Rs.5,000/-.

05. Learned advocate for defendant Nos.1(a) and 1(b) has filed his say on overleaf of present application contending that, defendant Nos.1(a) and 1(b) have no objection to allow present application.

06. In spite of ample opportunities being given, defendant No.2 has failed to file his say on present application. Hence, present application is hereby decided on merit without say of defendant No.2.

07. Heard learned advocate for plaintiffs and the applicant, at length. They have argued in consonance of their pleadings. Learned advocate for defendants failed to argue on present application.

08. Learned advocate for the applicant vehemently argued that, the suit property is ancestral property of the applicant and deceased defendant No.1. The applicant has executed relinquish-deed in respect of 41 R out of 83 R, *Pot kharab* 03R in Gat No.111 and not the suit property. The suit property in the case at hand is admeasuring 42 R, *Pot kharab* 01R out of 83 R, *Pot kharab* 03R in Gat No.111. Hence, the applicant is having her right, share and interest in the suit property. Therefore, the applicant is necessary party in the present suit. He lastly prayed that, the applicant may be impleaded in the present suit.

09. In support of his aforesaid submissions, learned advocate for the applicant referred to and relied on a decision in the case of **Natasha Dilip Singh and anr. v. Michael Tony Ferns and ors. [2018(4) Mh.L.J. 596]** wherein the Hon'ble Bombay High Court held that, in a suit for specific performance of agreement to sell, a party may be added where it is either found to be a necessary or proper party.

10. Learned advocate for the applicant also relied on a decision in the case of **Dharmendra Raghuvanshi v. Radha Goyal and ors. (AIR Online 2020 MP 724)** wherein the Hon'ble Madhya Pradesh High Court held that, whenever the third party show a fair resemblance of title or interest, he can certainly file an application for impleadment in a suit for specific performance.

11. Learned advocate for the applicant further relied on a decision in the case of **Baluram v. P. Chellathangam (2015 AIR SEW 430)** wherein the Hon'ble Supreme Court held that, in a suit of specific performance of contract against trustees, beneficiary of trust property can not be held to be stranger.

12. Learned advocate for the applicant also relied on a decision in the case of **Mohammad Rafi Rain v. Md.Hanif [2023(4) AJR 531]** wherein the Hon'ble Jharkhand High Court held that, it is a settled principle of law that, there is no limitation for impleadment of a necessary or proper party in the suit as per provision under Order I rule 10(2) of the CPC.

13. The submissions made on behalf of the applicant were strongly opposed by learned advocate for plaintiffs. He strenuously argued that, the applicant has already relinquished her share in ancestral properties by executing registered relinquish-deed on

25/05/2011 in favour deceased defendant No.1. The applicant has not disputed said relinquish-deed till today. Moreover, legal heirs of deceased defendant No.1 i.e. defendants Nos.1(a) and 1(b) in collusion with deceased defendant No.1 instituted a suit bearing R.C.S.No.94/2012 for partition and separate possession of ancestral properties including present suit property against deceased defendant No.1. In said suit, defendant Nos.1(a) and 1(b) and deceased defendant No.1 entered into compromise and accordingly, the suit came to be decided on 19/03/2012. Present applicant was not party to R.C.S.No.94/2012. However, she has not challenged decree passed in said suit till today. In such circumstances, unless relinquish-deed executed by the applicant is canceled by the Competent Authority or the Court, the applicant can not be permitted to claim her right, share and interest in the suit property. Furthermore, unless decree passed in R.C.S.No.94/2012 is set aside or declared to be not binding on share of the applicant in the suit property in the present case, the applicant can not be permitted to claim her right, share and interest in the suit property. Learned advocate for plaintiffs further argued that, considering nature of the suit and peculiar facts and circumstances, the applicant is not necessary party in the present suit. Hence, he prayed that the application may be rejected with cost of Rs.5,000/-.

14. Learned advocate for plaintiffs referred to and relied on the decision in the case of **Kasturi v. Iyyamperumal and ors. (AIR 2005 SC 2813)** wherein the Hon'ble Supreme Court held that, in a suit for specific performance of a contract of sale the third party or stranger to the contract for sale claiming independent title and possession over contracted property is neither necessary nor proper party and, therefore, not entitled to join as party defendant in the suit.

15. Learned advocate for plaintiffs further relied on the decision in the case of **Mumbai International Pvt. Ltd. v. Regency Convention Central and Hotels Pvt. Ltd. and ors. (AIR 2010 SC 3109)** wherein the Hon'ble Supreme Court held that, the fact that a person is likely to secure a right or interest in the suit property, after the suit is decided against the plaintiff, will not make a such person a necessary party or a proper party to the suit for specific performance.

16. In the light of submissions made on behalf of the respective parties and the decisions cited on their behalf, it is necessary to evaluate merits of present application.

17. The applicant has filed present application under Order I Rule 10 of the CPC contending that, she is necessary party in the present suit, hence, she be impleaded in this suit. It is worthy to mention that, the question as to whether an individual is a proper or necessary party to a suit would depend upon the nature of the relief claimed in the suit and the right or interest projected by an individual, who proposes to get himself/herself impleaded.

18. In the case at hand, plaintiffs have sought for relief of specific performance of agreement to sale dated 25/01/2011 executed in their favour by deceased defendant No.1. As per Sections 15(a) and 15(b) of the Specific Relief Act, 1963 any party to the contract or their representative in interest or their principal may obtain the relief of specific performance of the contract. In the case at hand, it is admitted position that, the applicant was not party to the agreement of sale dated 25/01/2011. In such circumstances, it is necessary to look into right or interest projected by the applicant in present application.

19. According to the applicant, the suit property is her ancestral property and she is having right, share and interest therein. However, at the face of record it appears that, present defendant Nos.1(a) and 1(b) instituted a suit bearing R.C.S.No.94/2012 against present defendant No.1 for partition and separate possession of their ancestral properties including present suit property and said suit came to be decreed on 19/03/2012 as per terms and conditions of compromise pursis filed by present defendant Nos.1(a), 1(b) and present defendant No.1. It is admitted fact that, present applicant was not party to R.C.S.No.94/2012. However, there is nothing on record to prima facie show that, present applicant has challenged decree passed in R.C.S.No.94/2012 contending that, said decree is not binding upon her to the extent of her share in the suit property.

20. It is further case of the applicant that, the suit property is her ancestral property. It is significant to note that, the suit property is Southern side land admeasuring 42 R, *Pot kharab* 01R in Gat No.111 situated at village Akiwat. At the face of record it appears that, the applicant and her sister Sou. Ujwala Aambi have executed registered relinquish-deed bearing No.2619 in favour deceased defendant No.1 in respect of their ancestral properties including land admeasuring 41 R out of 83 R, *Pot kharab* 03R in Gat No.111 situated at village Akiwat. However, at the face of record it appears that, the applicant and Sou. Ujwala Aambi have not given any specific description of a land admeasuring 41 R out of 83 R, *Pot kharab* 03R in Gat No.111 in relinquish-deed executed by them in favour of deceased defendant No.1. Moreover, there is nothing on record to prima facie show that, the applicant has disputed above referred relinquish-deed.

21. Apart from this, on perusal record and proceeding it further appears that, in view of registered sale-deed bearing No.366/2011

dated 21/01/2011 executed in favour of deceased defendant No.1 by Tatoba Ramu Ingale and Ajit Ramu Ingale, deceased defendant No.1 became owner of land admeasuring 42 R, *Pot kharab* 01R in Gat No.111 situated at village Akiwat. There is nothing on record to prima facie show that, the applicant has challenged above sale-deed before any Competent Authority or the Court. Moreover, prima facie it does not appear from above sale-deed that, even though said sale-deed is executed in favour of deceased defendant No.1, present applicant also gets right, share and interest in admeasuring 42 R, *Pot kharab* 01R in Gat No.111 situated at village Akiwat under said sale-deed.

22. On the contrary, at the face of record it appears that, ancestral properties including whole Gat No.111 situated at village Akiwat have been partitioned between present defendant Nos.1(a), 1(b) and present defendant No.1 in R.C.S.No.94/2012. At the cost of repetition, there is nothing on record to prima facie show that, present applicant has challenged the decree passed in R.C.S.No.94/2012. Per contra, it appears that, present plaintiffs have challenged said decree by instituting a suit bearing R.C.S.No.152/2012 and said suit is pending in the present Court.

23. In view above peculiar facts and circumstances prima facie it appears that, unless relinquish-deed No.2619 is canceled by the Competent Authority or the Court and the decree passed in R.C.S.No.94/2012 is set aside or declared as not binding on share of present applicant in the suit property by the Competent Court, the applicant can not claim her right, share and interest in the suit property. Hence, in view of peculiar facts and circumstances of the case in hand it shows that, decisions cited on behalf of the applicant would be of no help to the applicant.

24. At this juncture, it will be useful to refer the decision in the case of **Kasturi (Supra)** wherein the Hon'ble Supreme Court while relying on its decision in the case of **Vijay Pratap and ors v. Sambho Saran Sinha and ors. [1996 (10) SCC 53]** 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 can not be turned into a regular title suit. The Hon'ble Supreme Court further held that, a third party or a stranger to the contract can not be added so as to convert a suit of one character to a suit of different character.

25. In the case at hand it shows that, if present application is allowed, the scope of the suit for specific performance of agreement of sale shall be enlarged which is not permissible in law. Furthermore, considering nature of the suit, peculiar facts and circumstances of the case it shows that, presence of the applicant is not necessary for complete and effective adjudication of the fact-in-issue in the present suit. Hence, in view of decision in the case of **Kasturi (Supra)** as well as considering peculiar facts and circumstances of the present case, the application is liable to be rejected. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.124) is hereby rejected.
2. Parties to bear their own costs.

(Dictated and pronounced in the Open Court).

Date: 24/07/2024.

Sd/-
(Balasaheb S. Gaikwad)
Civil Judge, Junior Division,
Kurundwad.