



2026:CGHC:16652-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No.123 of 2021

Reserved on 20/03/2026

Pronounced on 10/04/2026

Manoj Kumar Shukla S/o Late Chandra Shekhar Shukla, Aged About 79 Years R/o Kamthi Line, Rajnandgaon, Presently R/o HIG-1 "Akash", D-51, Abhilasha Parisar, Tifra, Bilaspur Chhattisgarh.

... Appellant

versus

1 - Leela Bai Kothari W/o Late Phool Chand Kothari, Aged About 72 Years R/o Azad Chowk, Rajnandgaon Chhattisgarh. (Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari)

2 - Gautam Chand Kothari, S/o Late Phool Chand Kothari, R/o Azad Chowk, Rajnandgaon Chhattisgarh (Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari).

3 - Smt. Kiran Lodha, W/o Shri Tarachand Lodha, Cloth Merchant, Tahsil Dondilohara, District Balod Chhattisgarh. (Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari)

4 - Smt. Manju Sethia, W/o Shri Abhay Sethia, Aditya Finance, Gujri Chowk, Balaghat (M.P.) Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari.

5 - Smt. Suraj Jhabak, S/o Shri Suresh Jhabak, Suresh Textiles, Malviya Road, Raipur, Chhattisgarh. Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari.

6 - Smt. Tara Kotadia, W/o Shri Uttam Chand Kotadia, BNK Colony, Kondagaon, District Kondagaon (Bastar) Chhattisgarh. Legal Heirs Of Original Deceased Plaintiff Phool Chand Kothari.

7 - Smt. Poonam Shukla Wd/o Late Santosh Kumar Shukla Aged About 38 Years R/o Besides Central Bank, Kamthi Line, Rajnandgaon, Tashil And District Rajnandgaon, Chhattisgarh.

8 - Kumari Deepti Shukla D/o Santosh Shukla, Aged About 29 Years R/o Besides Central Bank, Kamthi Line, Rajnandgaon, Tashil And District Rajnandgaon, Chhattisgarh.



9 - Kumari Richa Shukla D/o Late Santosh Shukla Aged About 12 Years (Minor Through Their Natural Guardian Mother Smt. Poonam Shukla, Widow Of Late Santosh Kumar Shukla), R/o Besides Central Bank, Kamthi Line, Rajnandgaon, Tashil And District Rajnandgaon, Chhattisgarh.

10 - Kumari Dipika Shukla D/o Late Santosh Shukla Minor Through Their Natural Guardian Mother Smt. Poonam Shukla, Widow Of Late Santosh Kumar Shukla R/o Besides Central Bank, Kamthi Line, Rajnandgaon, Tashil And District Rajnandgaon, Chhattisgarh.

11 - Guruprasad S/o Santosh Shukla Aged About 9 Years Minors Through Their Natural Guardian Mother Smt. Poonam Shukla, Widow Of Late Santosh Kumar Shukla R/o Besides Central Bank, Kamthi Line, Rajnandgaon, Tashil And District Rajnandgaon, Chhattisgarh.

... Respondent(s)

For Appellant	:	Shri B.P. Sharma, appears along with Shri M.L. Sakat, Advocates.
For Respondents No.2 to 6	:	Shri Siddharth Shukla, Advocate
For Respondents No.7 to 11	:	Shri Ratnesh Kumar Agrawal, Advocate
		Respondent No.1 is reported to be dead.

**D.B.: Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Amitendra Kishore Prasad**

C A V Judgment

Per Sanjay S. Agrawal, J.

1. Heard on I.A. No.1/2021, an application filed by the appellant seeking leave to prefer an appeal against the impugned judgment and decree dated 25/02/2020 passed by the learned District Judge, Rajnandgaon in Civil Suit No.1-A/2008, decreeing the plaintiff's claim for specific performance of contract for sale of the suit shop.
2. Learned counsel appearing for the appellant submits that the appellant, being co-owner of the shop in question would fall within the purview of "person aggrieved" and would, thus, entitled to get the leave of the court to assail the impugned judgment and decree granting a decree for specific performance of contract for the alleged suit shop, as his right has been affected pre-judicially. In support, he placed his reliance



upon the principles laid down by the Supreme Court in the matter of ***'H. Anjanappa and others vs. A. Prabhakar and others'*** reported in ***2025 SCC Online SC 183***.

3. In response, learned counsel appearing for the respondents submits that the application as made seeking leave to prefer an appeal against the impugned judgment and decree while suppressing the material facts regarding refusal of his impleadment to the suit under Order 1 Rule 10 of CPC deserves to be rejected. It is contended further that in a suit for specific performance of contract, the appellant, who is not a party to the alleged agreement to sale, would not fall within the purview of "aggrieved person", in view of the principles laid down by the Supreme Court in the matter of ***'Kasturi vs. Iyyamperumal and others'***, reported in ***(2005) 6 SCC 733*** and, that by referring to paragraph 33 of the impugned judgment and decree, it is contended further that since the subject matter has been directed to be considered to be the share of his late brother, namely, Santosh Shukla, therefore, his interest cannot be held to be affected pre-judicially, so as to entitle him to get the leave to prefer an appeal. The application is, therefore, liable to be rejected.
4. From perusal of the record, it appears that a decree for specific performance of contract for sale of the suit shop was granted in favour of the plaintiff-Phool Chand Kothari (since deceased now represented by his Legal Representatives, namely, Leela Bai Kothari and others), based upon an agreement to sale, where the appellant was admittedly not the party.



5. Being aggrieved with the said decree, an appeal, being First Appeal No.73/2021 has been preferred by the widow of Santosh Shukla, who had agreed to alienate the shop in question in favour of said deceased plaintiff and thereafter, his brother, the present appellant-Manoj Kumar Shukla has moved this application seeking leave to prefer an appeal against the impugned judgment and decree on the ground that, being a co-owner, his right has been affected pre-judicially and is, thus, entitled to assail the same in order to protect his interest.
6. Perusal of the record would, however, show that during the pendency of the suit, an application enumerated under Order 1 Rule 10 read with Section 151 of CPC was made by him for his impleadment as he is the joint owner of the alleged suit shop, but the aforesaid application was rejected by the trial court vide order dated 07/01/2009, finding inter alia, that impleadment of the appellant in a suit for specific performance of contract, where he was not a party to the alleged agreement to sale, would change the nature of the said suit and, the findings so recorded has been affirmed by this court vide order dated 30/06/2017 in W.P.(227) No.798/2009 preferred by the appellant. It is to be seen that while examining the propriety of the said order, rejecting the appellant's application filed under Order 1 Rule 10 CPC, the question as to whether the appellant, being a co-owner of the subject matter, has a legal right or not, was considered in the said petition and that by placing reliance upon the principles laid down by the Supreme Court in the matter of '*Kasturi vs. Iyyamperumal and others*', reported in **(2005) 6 SCC 733**, has declined the appellant to be impleaded as a party in the subject matter, as in the said matter, the



provision prescribed under Section 19 of the Specific Relief Act, 1963 was considered and it was held that the person who is not a party to the agreement and claims independent title and possession adversely to the title of the vendor, would not fall within the purview of a "necessary party" in a suit for specific performance of contract for sale of the immovable property. The relevant observations made to this effect at paragraphs 8 and 9, read as under :-

8. "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:

"19. (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."

9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (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.”

7. It held further at paragraph 11 that the scope of the suit for specific performance of contract would be enlarged virtually in a suit for title, if the person, who is not a party to the agreement, is added. The observation made at the said paragraph reads as under :-

11. As noted hereinafter, 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 v. Small*, reported in (1834) 40 ER 848, made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract of 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 at 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."

8. The principles laid down by the Full Bench of High Court of Madhya Pradesh in the matter of '**Panna and another vs. Jeevanlal and another**' reported in **1976 J LJ 84** is also to be seen at this juncture, where a third person, who claims to be the co-owner of the subject matter, was held to be not a necessary party in a suit for specific performance of contract. The relevant observation made at paragraph 15, reads as under :-

15 "In the light of the aforesaid discussion, we do not agree with the view taken by Krishnan, J. (as he then was) in Roopkishore and others v. Tarabai and others (supra). The learned Judge has based his view on the ground that if the person claiming adversely to the vendors are not joined as parties in the suit, there would be a problem of possession and therefore, in the interest of the purchaser plaintiff and to avoid the multiplicity of suits, he is a proper party. But, in our opinion these are not the valid considerations. If the plaintiff, even after notice of claim of title hostile to his vendor by an intervener, does not want to join the intervener, he takes the risk. He cannot be forced upon to join the intervener. We are in agreement with the view taken by Bhargava, J. (as he then was) in Gananandrao v. Babulal and others (supra) that in a suit for specific performance of a contract for sale in respect of a property against the defendant, some person who applies for being impleaded as a party to the suit on the ground that he has a right by birth in the suit property, cannot be joined as a party under Order 1, rule 10 of the Code, because if such a person was allowed to intervene in the suit as a party, the nature of the suit will change from a suit for specific performance of a contract to that of a suit for title. It has further been held that the proper course is to institute another suit for title, impleading parties to the suit in which the interveners had prayed for being joined as a party."



9. While considering the aforesaid principles laid down in the above-referred matter, the appellant, though claimed to be the co-owner of the shop in question, but was not held to be a necessary party and accordingly, his application made under Order 1 Rule 10 read with Section 151 CPC for his impleadment, was rejected by the trial court vide order dated 07/01/2009 and was affirmed further by this court vide order dated 30/06/2017 in W.P.(227)No.798 of 2009.
10. It is to be seen further that despite the refusal of his impleadment as such, the appellant, while suppressing the aforesaid material facts, the instant application has been made seeking leave to prefer an appeal against the impugned judgment and decree, while placing reliance upon the principles laid down by the Supreme Court in the matter of ***H. Anjanappa and others vs. A. Prabhakar and others*** reported in ***2025 SCC Online SC 183***. The principles laid down in the said matter is, however, entirely on different footings, as in the said matter, a suit for specific performance of contract was instituted by the plaintiff against the defendant, namely defendant No.3, who had agreed to alienate the subject matter in his (plaintiff's) favour and during the pendency of a suit, a temporary injunction was granted restraining him (defendant No.3) to create any third party interest, yet was alienated by him to the Respondents No.1 & 2 and, being transferee *pendente lite*, they have prayed for leave to appeal against the decree drawn for specific performance of contract, as the appeal preferred by their vendor, i.e. defendant No.3, was dismissed. The application so made, was allowed by the High Court, but since they have purchased the subject matter during the



operation of the injunction, they have, therefore, been held to be not entitled to get leave for preferring an appeal. The relevant observations made therein at paragraph-57 reads as under :-

57. “Having regard to the fact that the Respondent Nos. 1 and 2 respectively purchased the suit property during the pendency of the suit instituted for specific performance and that too, while the injunction against the original owner (transferor) was operating, the Respondent Nos. 1 and 2 respectively could not be said to have even made out any good case for grant of leave to appeal.”

11. The aforesaid principles laid down by the Supreme Court is, thus, distinguishable from the facts involved herein and, no reliance could be placed upon it.
12. Considering the facts and circumstances of the case, considering further the rejection of the appellant's application under Order 1 Rule 10 CPC by the trial court vide order dated 07/01/2009, affirmed by this court vide order dated 30/06/2017 passed in W.P.(227) No.798/2009, which has already attained its finality by efflux of time, the interest of the appellant is, therefore, cannot be held to be affected pre-judicially, so as to entitle to question the impugned judgment and decree dated 25/02/2020 passed by the learned District Judge, Rajnandgaon in Civil Suit No.1-A/2008.
13. Accordingly, the said application (I.A.No.1 of 2021) seeking leave to prefer an appeal is rejected.

No order as to costs.

SD/-
(Sanjay S. Agrawal)
Judge

SD/-
(Amitendra Kishore Prasad)
Judge