



2026:CGHC:19213

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 951 of 2024

Sanjay Sahu S/o Kailash Sahu Aged About 40 Years Caste - Teli, R/o Darripara, Ambikapur, District Surguja Chhattisgarh.

... Petitioner

versus

1 - Smt. Gaytri Patel W/o Vijay Patel Aged About 46 Years Caste Gujrati, R/o Sattipara, Ambikapur, District Surguja Chhattisgarh. Presently R/o Near Anand Nagar Railway Station, Block No. B-45, Village And Tahsil Dhoraji, District Rajkot (Gujrat)

2 - Jai Bhagwan Agrawal S/o Mohan Lal Agrawal Aged About 55 Years R/o Brahminpara, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh.

... Respondents

For Petitioner : Mr. Malay Shrivastava, Advocate

For Respondent No.2 : Mr. Anurag Singh, Advocate

(Hon'ble Shri Justice Ravindra Kumar Agrawal)

Order on Board

25/04/2026

Heard.

1. The present petition has been filed against the order order dated 30/09/2024 passed in Civil Suit No.10-A/2023 by the Third District Judge, Ambikapur, District Surguja, C.G. whereby the application filed

by Respondent No.2 has been allowed and he was directed to be implead as Respondent No.2 in the Suit.

2. Learned counsel for the petitioner would submit that a suit for specific performance of contract has been preferred by the petitioner before the learned trial Court against the Defendant/Respondent No.1. It is submitted in the civil suit that an agreement was executed on 07/01/2020 for sale of her land for total consideration of Rs.18,20,000/-. The said property was bearing Khasra No.146/2026, area 0.0574 Hectare, which has been appended as Schedule -A annexed with the plaint. He would further submit that the application filed by the Respondent No.2 has been allowed by the learned trial Court holding that the Respondent No.2 would be the proper and necessary party as the agreement was also executed in his favour by the Defendant No.1. He would next contend that Respondent No.2 has no right or title over the property and he is claiming his independent right by virtue of an agreement executed on 09/02/2011 in his favour. He would next submit that Respondent No.2 is also prosecuting a civil suit No.235A /2024 before the learned First Civil Judge, Senior Division, Ambikapur, District Surguja, for his independent right of specific performance of the contract on the basis of the alleged agreement dated 09/02/2011, therefore, he cannot be impleaded in the present suit. He would lastly submit that under the circumstances, the impugned order may be set aside and the instant petition may be allowed.
3. *Per contra*, learned counsel for Respondent No.2 opposes the submissions advanced by learned counsel for the petitioner and would

submit that in order to avoid the multiplicity of the proceedings the impleadment of Respondent No.2 is necessary in the suit filed by the petitioner and he would also submit that in the suit filed by the Respondent No.2 before the learned First Civil Judge, Senior Division, Ambikapur, District Surguja, C.G. bearing Civil Suit No.235A/2024 wherein the petitioner has been arrayed as Defendant No.2. Thus, the rights claimed by the petitioner and Respondent No. 2 are directly overlapping and interconnected, and any adjudication in absence of Respondent No. 2 would result in conflicting and inconsistent decrees. Therefore, the contention of the petitioner that Respondent No. 2 is neither a necessary nor proper party is wholly erroneous. He would lastly submit that the learned trial Court has rightly considered the application and has ordered for impleading Respondent No.2 as Defendant No.2 in the civil suit. He would lastly submit that the instant petition devoid of merits is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the documents.
5. The plaintiff has pleaded in the suit that the suit for specific performance of contract based on an agreement dated 07/01/2020 executed exclusively between the petitioner/plaintiff and respondent No. 1. The lis is thus confined to the contractual obligations inter se the parties to the agreement. Respondent No. 2 is neither a necessary nor a proper party to the present proceedings. It is a settled proposition of law that in a suit for specific performance, only the parties to the contract or their legal representatives are necessary parties. A third party, claiming independent or subsequent rights, cannot be permitted to enlarge the scope of the suit.

The petitioner is not seeking any relief against respondent No. 2, and no adjudication in the present suit is required qua respondent No. 2. Therefore, his presence is wholly unnecessary for effective and complete adjudication of the dispute. The learned trial Court has failed to consider that mere existence of an agreement to sell or any alleged interest claimed by respondent No. 2 does not confer any enforceable right so as to entitle him to be impleaded in a suit for specific performance filed by the petitioner. The application filed by respondent No. 2 is malafide and intended solely to delay the proceedings, and appears to have been filed in collusion with respondent No. 1 to frustrate the legitimate claim of the petitioner. It is further submitted that impleadment of respondent No. 2 would unnecessarily complicate and widen the scope of the suit, converting a simple suit for specific performance into a multifaceted litigation, which is impermissible in law.

6. It is not in dispute that the plaintiff/petitioner is prosecuting a suit for specific performance of the contract against Defendant No.1. In the suit relating to the specific performance of contract and the execution of agreement, the payment of sale consideration and readiness and willingness by the respective parties are to be proved.
7. A suit is also being prosecuted by Respondent No.2 before the learned First Civil Judge, Senior Division, Ambikapur, District Surguja, C.G. bearing Civil Suit No.235A/2024 for his independent right in the agreement dated 09/02/2011. It is not a suit for any declaration of title or possession. In a suit for specific performance of contract which is strictly governed under the provisions of agreement between the parties

which are in contract of sale of land. It is not a case where Respondent No.2 is claiming that he is in possession of the suit property pursuant to the said agreement dated 09/02/2011.

8. In the case of "***Gurmit Singh Bhatia v. Kiran Kant Robinson and Others***" 2020 (13) SCC 773, the Hon'ble Supreme Court has considered the issue and held that the stranger to a contract cannot be impleaded as the party defendant in the suit. In para 5, it has been held that:-

5. We have heard the learned counsel for the respective parties at length.

5.1 At the outset, it is required to be noted that the original plaintiffs filed the suit against the original owner – vendor – original defendant 1 for specific performance of the agreement to sell with respect to suit property dated 3.5.2005. It is an admitted position that so far as agreement to sell dated 3.5.2005 of which the specific performance is sought, the appellant is not a party to the said agreement to sell. It appears that during the pendency of the aforesaid suit and though there was an injunction against the original owner – vendor restraining him from transferring and alienating the suit property, the vendor executed the sale deed in favour of the appellant by sale deed dated 10.07.2008. After a period of approximately four years, the appellant filed an application before the learned trial Court under Order 1 Rule 10 of the CPC for

his impleadment as a defendant. The appellant claimed the right on the basis of the said sale deed as well as the agreement to sell dated 31.3.2003 alleged to have been executed by the original vendor. The said application was opposed by the original plaintiffs. The learned trial Court despite the opposition by the original plaintiffs allowed the said application which has been set aside by the High Court by the impugned judgment and order. Thus, it was an application under Order 1 Rule 10 of the CPC by a third party to the agreement to sell between the original plaintiffs and original defendant 1 (vendor) and the said application for impleadment is/was opposed by the original plaintiffs. Therefore, the short question which is posed for consideration before this Court is, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him?

5.2 An identical question came to be considered before this Court in the case of *Kasturi* (supra) and applying the principle that the plaintiff is the *dominus litis*, in the similar facts and circumstances of the case, this Court observed and held that 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 and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The 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. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third

party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.

5.3 In paragraphs 15 and 16, this Court observed and held as under:

“15. As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 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 hereinafter, 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 Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 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 Respondents 2 and 3. It is an admitted position

that Respondents 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 hereinafter that in the event, Respondents 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 v. Sambhu Saran Sinha* [(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 Respondents 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 Respondents 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 Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 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 hereinafter, since Respondents 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, Respondents 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 CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 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 Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

16. 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 Respondents 2 and 3 and Respondents 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 Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 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.”

That thereafter, after observing and holding as above, this

Court in Kasturi (supra) further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the dominus litis, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law.

5.4 In the aforesaid decision in the case of Kasturi (supra), it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that 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 to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in a suit for specific performance of the contract to sell the lis between the

vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property.

5.5. It is further observed and held by this Court in *Kasturi* (supra) that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.

5.6 Therefore, considering the decision of this Court in the case of *Kasturi* (supra), the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original defendant no.1 and in a suit for specific performance of the contract to which the

appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs.

9. In the backdrop of the aforesaid factual matrix and the law laid down by the Hon'ble Supreme Court in the above cited case of "Gurmit Singh Bhatia" (supra), this Court finds that the controversy involved in the present suit is confined to enforcement of the agreement dated 07/01/2020 allegedly executed between the petitioner/plaintiff and Respondent No.1. The scope of adjudication in a suit for specific performance is limited to examining the validity of the contract, readiness and willingness of the parties, and entitlement to the relief claimed thereunder. Respondent No.2, who claims an independent right based on a separate agreement dated 09/02/2011, is not a party to the agreement in question. The mere pendency of another suit filed by Respondent No.2 for specific performance does not ipso facto render him a necessary or proper party in the present proceedings. The law laid down by the Hon'ble Supreme Court in "Gurmit Singh Bhatia" (supra), clearly enunciates that a stranger to the contract, claiming independent rights, cannot be impleaded so as to enlarge the scope of a suit for specific performance.
10. Accordingly, the impugned order dated 30/09/2024 passed by the learned Third District Judge, Ambikapur, District Surguja, allowing the application for impleadment of Respondent No.2, is unsustainable in law and deserves to be set aside.

11. The petition, therefore, merits acceptance and is hereby allowed. The impugned order dated 30/09/2024, passed by the learned Third District Judge, Ambikapur, District Surguja, is set aside, and the application filed by Respondent No.2 under Order 1 Rule 10 CPC stands rejected. The trial Court is directed to proceed with the suit expeditiously in accordance with law, uninfluenced by any observations made herein.

SD/-

(Ravindra Kumar Agrawal)
JUDGE

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