

GAHC010029352026



2026:GAU-AS:2208

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/41/2026

AKBAR ALI AND 2 ORS.
S/O LT. SUKUR ALI, VILL- GOLAPARA PART-III, P.O.- GOLAPARA, P.S.-
ABHAYAPURI, DIST- BONGAIGAON, ASSAM

2: ABDUL MANNAN
S/O LATE SUKUR ALI
R/O ABHAYPURI TOWN
WARD NO. 11
P.O. AND P.S.- ABHAYAPURI
DIST- BONGAIGAON
ASSAM

3: SHOUKAT ALI AHMED
S/O LATE SUKUR ALI
R/O ABHAYPURI TOWN
WARD NO. 11
P.O. AND P.S.- ABHAYAPURI
DIST- BONGAIGAON
ASSA

VERSUS

SULTAN MAHMUD AND ANR
S/O LT. CHAND MAHMUD, VILL- BHARAL KUNDI, P.O.- ASHOK PAPER
MILL, P.S.- JOGIGHOPA, DIST- BONGAIGAON, ASSAM

2: MONSER ALI AHMED
S/O LT. SUKUR ALI
R/O ABHAYPURI TOWN (NAYAPARA)
WARD NO. IV
P.O. AND P.S.- ABHAYAPURI
DIST- BONGAIGAON
ASSA

Advocate for the Petitioner : MR. A T SARKAR, S R DAS

Advocate for the Respondent : ,

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER**

16.02.2026

Heard Mr. A.T. Sarkar, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, read with Section 115 of the Code of the Civil Procedure, the petitioners have challenged the order dated 13.11.2025, passed by the learned Civil Judge (Sr. Division), Bongaigaon (Trial Court, for short), in Misc.(J) Case No.78/2025, arising out of Title Suit No.152/2025. It is to be noted here that vide impugned order dated 13.11.2025, the learned Trial Court has rejected the petition filed by the petitioners under Order I Rule 10(2) of the Code of Civil Procedure.

3. Mr. Sarkar, learned counsel for the petitioners submits that the present petitioners, namely, Akbar Ali, Abdul Mannan and Shoukat Ali Ahmed and the proforma respondent No.2, namely, Monser Ali Ahmed are all siblings and are the sons of late Sukur Ali, who is the owner of a plot of land measuring 2 katha 10 lecha, covered by Patta No.5, Dag No.22, situated at village Korea Pahar, under Baithamari Revenue Circle, in the district of Bongaigaon, and that the proforma respondent No.2, namely, Monser Ali Ahmed has sold a plot of land, measuring 2 katha 10 lecha, covered by Patta No.5, Dag No.22, situated at village Korea Pahar, under Baithamari Revenue Circle, in the district of Bongaigaon to the respondent No.1 Md. Sultan Mahmud. Thereafter, Sultan Mahmud, the respondent No.1 has instituted one title suit, being Title Suit No.152/2025, which is now pending before the Court of learned

Civil Judge (Sr. Division), Bongaigaon for specific performance of the contract, with a decree for direction to execute a registered sale deed in favour of him in respect of the said plot of land. Mr. Sarkar further submits that as soon as the petitioners came to know about the same, they have filed one impleadment application under Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure on 27.05.2025, upon which the learned Trial Court has registered the Misc.(J) Case No.78/2025 and thereafter, hearing both the parties, the learned Trial Court has dismissed the same, vide impugned order, dated 13.11.2025.

3.1 Mr. Sarkar further submits that the proforma respondent No.2 has sold the land to the respondent No.1 by fraudulently executing one gift deed allegedly executed by their father and also by forging his signature, without the knowledge of the petitioners, though they have equal right over the same like the proforma respondent No.2. Mr. Sarkar also submits that the petitioners have also filed one civil suit before the learned Civil Judge (Jr. Division), North Salmara, Abhayapur, being Title Suit No.111/2025, challenging the said gift deed and the same is pending for disposal. Mr. Sarkar further submits that vide impugned order, dated 13.11.2025, the learned Trial Court has dismissed the petition filed by the petitioners by observing that in a suit for specific performance of the contract, the plaintiff and the defendant are the necessary parties and a person claiming an independent title or hostile interest in the suit property is not a necessary party to a suit for specific performance of contract because the Court has only to decide whether the contract between the plaintiff and the defendant is valid and enforceable and that the petitioners have already instituted a separate suit challenging the gift deed and they are not parties to the contract to be specifically enforced and no relief is claimed against them and enlarging the scope of the present suit is not permissible under the law and since they have filed another suit, their non-impleadment in the present suit will cause no prejudice to them and under such circumstances, the learned Trial Court has dismissed the petition.

3.2 Referring to a decision of Hon'ble Supreme Court in the case of **M/s J.N. Real**

Estate v. Shailendra Pradhan & Ors., [Civil Appeal Nos.5405-5406/2025, arising out of Special Leave Petition (C) Nos.12205-12206/2024], especially in paragraph Nos.32 and 33, Mr. Sarkar submits that in the said case, the Hon'ble Supreme Court has allowed the appellant having found him necessary party for proper and effective adjudication of the dispute in the suit. He also submits that for effective adjudication of the dispute in the Title Suit No.152/2025, impleadment of the present petitioners are very much necessary and therefore, it is contended to allow this petition.

4. Having heard the submission of learned counsel for the petitioners, this Court has gone through the petition and the documents placed on the record and also perused the impugned order and the decision referred by Mr. Sarkar.

5. A perusal of the decision in **M/s J.N. Real Estate (supra)**, it appears that in the said case, the Hon'ble Supreme Court has categorically observed that the original plaintiff has not opposed the impleadment of the original defendant No.8 in his suit. Further, the facts of the case before the Hon'ble Supreme Court are clearly distinguishable from the facts of the present case.

6. In the case of **Kasturi v. Iyyamperumal**, reported in **(2005) 6 SCC 733**, Hon'ble Supreme Court has expounded the scope of Order I Rule 10(2) of the CPC and laid down following tests for determining whether a person is a 'necessary party' for the purpose of impleadment in a suit for specific performance:

"(i) *First*, that a bare reading of Order I Rule 10(2) clearly indicates that the necessary parties in a suit for specific performance of a contract for sale or an agreement to sell, are the parties to the contract or, if they are dead, their legal representatives, as also persons who had purchased the contracted property from the vendor. A subsequent purchaser would be a necessary party since his rights would be affected irrespective of whether he had purchased the contracted property, with or without notice of the contract. However, it was clarified that a person whose claim is adverse to the claim of a vendor,

is not a ‘necessary party’. Therefore, two tests were laid down by this Court, which must be satisfied for determining the question as to who is a necessary party —(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. The relevant observations read as under:

“7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) 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. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. 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.”

(Emphasis supplied)

(ii) *Secondly*, as regards the meaning of “proper party”, it was observed that in case of a suit for specific performance, the guiding principle for deciding who is a proper party is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the agreement to sell. Such a question has to be decided while keeping in mind the scope of the suit for specific performance. If the addition of that party enlarges the scope of such suit so as to convert it into a suit for title, then the presence of such a party cannot be said to be necessary for the effective adjudication of the controversies involved in the suit. The relevant observations read 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* [(1834) 40 ER 848 : 3 My & Cr 63] made the following observations: (ER pp. 850-51)

‘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.’

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13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to

adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

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15. [...] 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. [...]”

(Emphasis supplied)

(iii) *Thirdly*, an intervenor seeking to be impleaded must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the agreement to sell. It was held that a person is considered to be legally interested in the answers to the controversy, only if he can satisfy the court that it may lead to a result that would legally affect him. The relevant observations read as under:

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“17. [...] Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In *Amon v. Raphael Tuck and Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357 : (1956) 2 WLR 372] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally.”

(Emphasis supplied)”

7. Thereafter, a two-judge bench of Hon'ble Supreme Court in the case of **Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)**, reported in (2007) 10 SCC 82, has held that it cannot be laid down as an absolute proposition that in a suit for specific performance, a third party can never be impleaded. Thereafter, it was opined that the decision of this Court in **Kasturi (supra)** must be seen in the context in which it was delivered and it was also held

that in some circumstances, flexibility is necessary to be taken into account, since an additional or different fact may materially change the conclusion.

8. Again, in the case of **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.**, reported in (2010) 7 SCC 417, Hon'ble Supreme Court has held that different situations require the application of different facets of Order I Rule 10(2) and it has also been held that there was no conflict between the decisions of Hon'ble Supreme Court in the case of **Kasturi (supra)** and **Sumtibai (supra)**. It was also held that Order I Rule 10(2) CPC did not pertain to the 'right' of a non-party to be impleaded as a party but deals with the 'judicial discretion' of the Court to strike out or add parties at any stage of the proceeding. It has further been held that in exercise of judicial discretion, Courts must act according to reason and fair play and not according to whims and caprice.

9. In the instant case, as observed by the learned Trial Court, the petitioners have already instituted one title suit, being Title Suit No.111/2025, before the Court of learned Civil Judge (Jr. Division), North Salmara, Abhayapuri, to ventilate their grievances challenging the gift deed, which was allegedly executed by the proforma respondent No.2 fraudulently. Indisputably, also the Title Suit No.152/2025 is filed for specific performance of the contract entered into by the respondent No.1 and the proforma respondent No.2. Also indisputably in the present case, no relief is claimed for by the respondent No.1 in the Title Suit No.152/2025, against the present petitioners before the learned Trial Court.

10. It is well settled that the power to implead a non-party in a title suit under the specific performance of the contract as held by the Hon'ble Supreme Court is a discretionary one. And while considering all the aforementioned facts, the learned Trial Court has exercised its discretion and dismissed the petition filed by the present petitioners mainly on the ground that they have already instituted one title suit, being Title Suit No.111/2025 and under such circumstances, this Court while exercising the

jurisdiction under Article 227 of the Constitution of India, cannot substitute its view with that of the learned Trial Court.

11. It is clearly held by the learned Trial Court that even if the petitioners are not impleaded in the Title Suit No.152/2025, no prejudice will be caused to them as they have instituted another title suit for determination of their right. It is also to be noted here that the decision of Hon'ble Supreme Court in the case of **Kasturi** (*supra*) is a three-judge bench decision.

12. Under the aforementioned facts and circumstances, this Court afraid that the decision referred by Mr. Sarkar, learned counsel for the petitioners, would not come into his assistance. Mr. Sarkar thus fails to demonstrate before this Court any illegality or infirmity in the impugned order, so passed by the learned Trial Court requiring any interference of this Court and accordingly, this revision petition stands dismissed.

Sd/- Robin Phukan
JUDGE

Comparing Assistant