HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12932/2025

Jairam Saini Son Of Shri Tularam Saini, Aged About 55 Years, Resident Of Dhani Kushalwali, Kotputli, District Kotputli Behror (Rajasthan).

----Applicant/Petitioner

Versus

1 Gangaram Son Of Shri Sheodan, Resident Of Shyam Nagar, Tehsil Kotputli, District Kotputli-Behror (Rajasthan).

----Plaintiff/Non Applicant/Contesting-Respondent

2 Bharatmal Son Of Shri Kaluram, Resident Of Mohalla Buchaheda, Tehsil Kotputli, District Kotputli-Behror (Rajasthan).

----Defendant/Respondent No.2

3 Sub Registrar, Kotputli, Tehsil Kotputli, District Kotputli-Behror (Rajasthan).

4 State Of Rajasthan, Through District Collector District Kotputli-Behror (Rajasthan).

5 Vinay Arora, Authorized Officer, HDFC Bank Ltd. Office At C-25 Bhagwandas Road, C-Scheme, Jaipur (Rajasthan).

----Non Applicants/Defendants/Performa Respondents

For Petitioner(s) : Mr. Saransh Saini
Mr. Vinod Kumar Sharma
Ms. Sanjana Choudhary
Ms. Ayushi Singh
Mr. Neeraj Kumar Pal

For Respondent(s) : Ms. Neha Sharma
Mr. Hukum Singh
Mr. Vineet Sharma for respondent HDFC Bank Ltd.

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Reportable

Date of hearing and conclusion of arguments	21.05.2026
Date on which the judgment was reserved	21.05.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	27.05.2026

1. The present writ petition has been filed assailing the order dated 11.07.2025, passed by the learned Additional District Judge No.4, Kotputli, District Kotputli-Behror, (hereinafter referred to as the 'learned Trial Court') whereby the application filed by the applicant-petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for impleadment as a party in a suit for specific performance, has been dismissed.

2. Brief facts giving rise to the present writ petition are that a suit for specific performance of agreement to sell dated 06.08.2020 was instituted by the plaintiff-respondent No.1 Gangaram against the defendant-respondent No.2 Bharatmal and respondents Nos. 3 and 4, being the Sub-Registrar, Kotputli, and the State of Rajasthan respectively.

2.1 It is averred in the writ petition that with regard to the subject matter of the suit, which is the property in dispute, an agreement to sell was collusively executed between the plaintiff and the defendant-respondent No. 2 on 06.08.2020. Prior to the alleged agreement to sell, the suit property had been mortgaged by the defendant-respondent No. 2 (Bharatmal) in favour of HDFC Bank Ltd. in the year 2018, to avail a financial credit/loan facility from the said bank. However, the account of the defendant-respondent No. 2 was subsequently declared as a Non-Performing Asset (NPA) on 30.11.2019 due to non-repayment of the loan amount.

2.2 In exercise of the powers conferred by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules of 2002'), the HDFC Bank Ltd. took possession of the mortgaged/suit property on 09.05.2023. Thereafter, a notice for sale of the suit property was issued on 25.10.2023 for a period of 30 days, calling upon the borrower and the public at large for repayment of the outstanding dues and/or to participate in the auction.

2.3 Upon the expiry of the notice period without repayment of the outstanding loan amount, the HDFC Bank Ltd. proceeded with the auction/sale of the mortgaged property in accordance with the SARFAESI Act. In the said auction proceedings, the applicant-petitioner emerged as the highest bidder and the suit property was sold to the applicant-petitioner on 01.12.2023. A Sale Certificate was also issued in his favour on 27.12.2023 by the Authorized Officer of HDFC Bank Ltd. in exercise of powers under Rule 9(6) of the Rules of 2002. Thus, the applicant-petitioner became the lawful owner of the suit property by virtue of the said auction-purchase and issuance of the sale certificate.

2.4 During the pendency of the suit for specific performance, the applicant-petitioner filed an application under Order 1 Rule 10 read with Section 151 CPC for being impleaded as a party-defendant in the suit. The primary ground urged by the applicant-petitioner was that the plaintiff-respondent No. 1 and the defendants-respondents Nos. 2, 3 & 4 were prosecuting the suit collusively, with the intent and purpose of obtaining a collusive decree to defeat and prejudice the legitimate rights of the applicant-petitioner as an auction-purchaser under the SARFAESI Act.

2.5 The applicant-petitioner further stated in his application that the alleged agreement to sell dated 06.08.2020 was entered into by the defendant-respondent No. 2 after the suit property had already been mortgaged with HDFC Bank Ltd. in 2018 and after the account had been declared NPA. Since the HDFC Bank Ltd. had already taken possession under SARFAESI Act, the defendant-respondent No. 2 had no saleable title or interest in the suit property as on the date of the alleged agreement to sell dated 06.08.2020. The applicant-petitioner thus sought the impleadment as a party so as to place the true and correct facts relating to the auction sale and the title of the applicant-petitioner before the learned Trial Court.

3. The learned Trial Court, vide impugned order dated 11.07.2025, rejected the application for impleadment holding, *inter alia*, that in a suit for specific performance, only the parties to the agreement are necessary parties, and that the applicant-petitioner being a stranger to the agreement, had no right to be impleaded as a party. Being aggrieved by the said order, the petitioner has preferred the present writ petition.

4. Learned counsel for the petitioner, at the outset, submitted that the applicant-petitioner is not merely a proper party but is also a necessary party to the suit, inasmuch as his rights and interests in the suit property are directly and substantially affected by the outcome of the suit for specific performance. Further, if any decree is passed in the said suit, even *inter partes*, it will directly operate against the interests of the applicant-petitioner as an auction-purchaser.

4.1 Learned counsel for the petitioner submitted that the suit filed by the plaintiff-respondent No. 1 is patently collusive and has been instituted with a mala fide intent to defeat the rights of the applicant-petitioner. Learned counsel for the petitioner further contended that, on the face of the record, the agreement to sell dated 06.08.2020 is suspicious, as the defendant-respondent No. 2 had already mortgaged the property with HDFC Bank Ltd. in 2018 and his account was declared NPA in November, 2019. Thus, a person who has already lost effective title and possession of the mortgaged property to a secured creditor under SARFAESI Act cannot validly execute an agreement to sell qua the said property in 2020. Thus, the suit has been filed by the plaintiff-respondent No. 1 with a mala fide intent to defeat the rights of the applicant-petitioner.

4.2 Learned counsel for the petitioner further contended that the agreement to sell, as stated in the plaint, contemplated payment of the entire sale consideration in cash, which itself is suspicious and unusual for a transaction of this nature and value, and casts a doubt on the bona fides of the plaintiff-respondent No. 1 as a purchaser for value without notice. Learned counsel for the petitioner also submitted that the suit is collusive in nature for the reason that agreement to sell has been shown on 06.08.2020, whereas the suit has been filed in the year 2022 and that after more than 4 years of the alleged agreement to sell.

4.3 Learned counsel for the petitioner submitted that the sale certificate issued under Rule 9(6) of the Rules of 2002 confers valid title upon the applicant-petitioner, and such title cannot be defeated by a collusive decree in a suit for specific performance to which the applicant-petitioner is not a party. Learned counsel further submitted that if the plaintiff and the defendants are succeeded in obtaining a collusive decree, then serious rights of the applicant-petitioner will be prejudiced as he had purchased the property in dispute from the bank when the account of the defendant-seller was made NPA and the mortgage property was auctioned.

4.4 Learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***M/s J.N. Real Estate Vs. Shailendra Pradhan & Ors.;*** *(2025) SCC Online SC 1015,* to support his contention that a person who has acquired title to the suit property through an auction sale under SARFAESI Act is a necessary and/or proper party in a suit for specific performance in respect of the same property, as the effective adjudication of the controversy in the suit cannot be achieved in his absence.

5. Per contra, learned counsel for the respondent submitted that in a suit for specific performance of an agreement to sell, the only necessary parties are the parties to the agreement, i.e., the contracting parties, and a stranger to the agreement cannot claim to be impleaded as a party to the suit as a matter of right.

5.1 Learned counsel for the respondent further submitted that the plaintiff is the *dominus litis* and is entitled to choose the parties against whom he wishes to file the suit. Thus, no person can be compelled to be added as a defendant against the wishes of the plaintiff in a suit for specific performance, where the reliefs sought are confined to compelling the contracting defendant to execute the registered sale deed.

5.2 Learned counsel for the respondent further submitted that the plaintiff-respondent No. 1 is a bona fide purchaser for value without notice and had entered into the agreement to sell with the defendant-respondent No. 2 without knowledge of the alleged mortgage or the NPA proceedings. Learned counsel thus submitted that the suit was filed in good faith to enforce the contractual rights of the plaintiff and is nowhere a collusive suit.

6. Heard learned counsel for the parties and perused the material available on record.

7. Before adverting to the controversy involved in the present writ petition, it is necessary to appreciate the true scope of Order 1 Rule 10 CPC, which reads as under:

> ***"Order 1 Rule 10 – Suit in name of wrong plaintiff, or without joining all plaintiffs ; addition and substitution of parties:***
>
> *……*
>
> *(2) Court may strike out or add parties – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

7.1 A plain reading of Order 1 Rule 10(2) CPC makes it manifestly clear that the provision is not restricted to 'necessary parties' alone. The provision uses two distinct expressions – (a) persons 'who ought to have been joined', which refers to necessary parties, and (b) persons 'whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit', which refers to proper parties. The legislature has, thus, drawn a clear and deliberate distinction between 'necessary parties' and 'proper parties', and the power of the Court under Order 1 Rule 10(2) CPC extends to both categories.

7.2 A 'necessary party' is a person in whose absence a complete and effective decree cannot be passed at all, or whose absence would cause prejudice to the existing parties or render the proceedings defective. However, a 'proper party' is one whose presence before the Court, though not absolutely necessary, would enable the Court to completely, effectually, and finally adjudicate upon all questions raised in the suit and to avoid multiplicity of litigation. The Court's power to add a proper party is wide and discretionary, to be exercised in the interest of justice and for complete adjudication of the controversy.

7.3 The jurisprudence governing impleadment under Order 1 Rule 10 CPC has consistently evolved around the distinction between a 'necessary party' and a 'proper party', while simultaneously preserving the essential character of the suit and preventing unnecessary enlargement of the *lis* beyond the controversy originally raised between the parties.

7.4 In ***Kasturi v. Iyyamperumal*** *; (2005) 6 SCC 733,* the Hon'ble Supreme Court authoritatively examined the scope of Order 1 Rule 10(2) CPC in the context of a suit for specific performance. The Hon'ble Supreme Court held that ordinarily the necessary parties in a suit for specific performance are the parties to the contract, their legal representatives, and a transferee claiming under the vendor. The Court further held that a stranger claiming independent title adverse to the vendor cannot ordinarily be impleaded, as such impleadment would enlarge the scope of the suit from one concerning enforceability of contract into a title dispute.

7.5 The Hon'ble Supreme Court further laid down the twin tests for determining whether a person is a necessary party, namely: (i) there must exist a right to some relief against such party in respect of the controversies involved in the proceedings; and (ii) no effective decree can be passed in the absence of such party. The Hon'ble Supreme Court further observed that the expression 'all the questions involved in the suit' occurring in Order 1 Rule 10(2) CPC refers to the controversies arising between the parties to the suit and not collateral disputes involving strangers claiming wholly independent rights. The relevant paragraph of ***Kasturi*** *(supra)* is reproduced herein below:

> *"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.

11. As noted hereinearlier, 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."*

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.

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."*

7.6 However, the law did not remain confined to a narrow interpretation of ***Kasturi*** *(supra)*. Subsequently, in ***Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. ;*** *(2010) 7 SCC 417*, the Hon'ble Supreme Court revisited the doctrine of impleadment and clarified that though the plaintiff remains *dominus litis*, such principle is always subject to the power of the Court under Order 1 Rule 10(2) CPC to implead a person who is either a necessary party or a proper party. The Hon'ble Supreme Court explained that a 'necessary party' is one in whose absence no effective decree can be passed, whereas a 'proper party' is one whose presence would enable the Court to completely, effectively and adequately adjudicate all matters in dispute, even though no relief may be claimed against such person. The Hon'ble Supreme Court further clarified that the Court possesses discretion to implead a proper party where the circumstances of the case so warrant in order to secure effective adjudication and avoid multiplicity of proceedings. The relevant paragraph of ***Mumbai International Airport Pvt. Ltd.*** *(supra)* is reproduced herein below:

"24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking

impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person *claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."*

7.7 In ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*** *; (2007) 10 SCC 82,* the Hon'ble Supreme Court further explained the scope of impleadment under Order 1 Rule 10 CPC in suits relating to immovable property and clarified the principles laid down in ***Kasturi*** *(supra)*. The Hon'ble Supreme Court observed that ***Kasturi*** *(supra)* cannot be understood to mean that every third party is barred from being impleaded in a suit for specific performance. The Court held that a stranger or busybody having no semblance of title or interest in the property cannot be permitted to intervene merely to obstruct or protract the proceedings. However, where a person demonstrates a *prima facie* semblance of title or a direct interest in the suit property, such person may be impleaded if his presence is necessary for complete and effective adjudication of the dispute. The Hon'ble Supreme Court thus recognized that impleadment cannot be refused merely because the proposed party is not a signatory to the agreement to sell, particularly when such party asserts rights directly connected with the suit property and likely to be affected by the decree ultimately passed by the Court. The relevant paragraph of ***Sumtibai*** *(supra)* is reproduced herein below:

"13. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584 85, paras 9-12)

‘9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 (HL)] (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D) […]’

…...

14. In view of the aforesaid decisions we are of the opinion that Kasturi case [(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

7.8 Thereafter, the Hon'ble Supreme Court in ***M/s J.N. Real Estate v. Shailendra Pradhan & Ors.*** *(supra),* undertook a significant re-examination of the principles laid down in ***Kasturi*** *(supra)* and ***Sumtibai*** *(supra)* clarified the true jurisprudential balance underlying Order 1 Rule 10 CPC. The Hon'ble Supreme Court noticed that ***Kasturi*** *(supra)* cannot be read as laying down an inflexible proposition that every third party must invariably be excluded from a suit for specific performance. Rather, the Court held that the question of impleadment must necessarily depend upon the nature of the controversy involved, the reliefs claimed, and the extent to which the rights of the proposed party are directly connected with the subject matter of the suit.

7.9 The Hon'ble Supreme Court in ***J.N. Real Estate*** *(supra)* specifically distinguished between: (i) a stranger asserting a wholly independent and collateral title unconnected with the subject matter of the suit; and (ii) a person whose rights arise from transactions directly connected with the suit property and whose rights are likely to be directly affected by the adjudication in the suit. The Hon'ble Supreme Court held that where the rights claimed by the proposed party are intrinsically connected with the suit property and the adjudication in the suit may directly prejudice such rights or result in conflicting decrees, the Court would be justified in exercising its discretionary power of impleadment. The relevant paragraphs of ***M/s J.N. Real Estate*** *(supra)* is reproduced herein below:

> *"28. This Court in Mumbai International Airport (supra) was also of the view that different situations require the application of different facets of Order I Rule 10(2) and consequently, held that there was no conflict between the decisions of this Court in*

Kasturi (supra) and Sumtibai (supra). It was reiterated that 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. In exercising this judicial discretion, courts must act according to reason and fair play and not according to whims and caprice.

<u>29. It was observed that the court may exercise discretion in impleading a person who is a 'proper party' upon an application by a non-party to the suit for specific performance.</u> If the court is of the view that the impleadment of such a proper party will alter the nature of the suit or introduce a new cause of action, it may either refuse to implead such person or order for his impleadment on certain conditions. <u>However, even otherwise, the court would not be precluded from impleading a 'proper party' unconditionally in its discretion. The relevant observations rendered in Mumbai International Airport (supra) read thus:</u>

> *"24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, <u>if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.</u> For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be*

impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

(Emphasis Supplied)

25. <u>In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."</u>

32. Having regard to the material on record, we are of the view that the High Court should not have interfered with the order passed by the Trial Court impleading the original defendant no. 8 (appellant herein) as one of the defendants in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. We say so because the genuineness of the transaction, if any, including the genuineness of the documents is to be looked into in the course of the trial. A party who is seeking impleadment may not be a necessary party but still, could be termed as a proper party. There is a fine distinction between a necessary party and a proper party. A necessary party is a person in whose absence no effective decree could be passed at all by the court. Whereas a proper party is one who though not a necessary party is a person whose presence would enable the *court to effectively and adequately adjudicate upon all matters in dispute in the suit."*

7.10 Thus, from the aforesaid judgments, the legal position which emerges is that impleadment under Order 1 Rule 10 CPC cannot be decided merely on the basis of a rigid formula that only parties to the agreement can be impleaded in a suit for specific performance. The true test is whether the proposed party has a direct, substantial and legally protectable interest in the subject matter of the suit, and whether his presence before the Court is necessary or proper for effective, complete and final adjudication of the controversies already involved in the proceedings. Simultaneously, the Court must ensure that impleadment does not unnecessarily convert the suit into a wholly independent and collateral title dispute foreign to the original cause of action.

8. Adverting to the facts of the present case, this Court finds that the applicant-petitioner is not a mere stranger or interloper having a remote or speculative interest in the suit property. The applicant-petitioner has acquired rights in the suit property through an auction sale conducted under the provisions of the SARFAESI Act and the Rules of 2002 by the secured creditor-HDFC Bank Ltd. The material available on record further reveals that the suit property had already been mortgaged in favour of HDFC Bank Ltd. in the year 2018, much prior to the alleged agreement to sell dated 06.08.2020 relied upon by the plaintiff-respondent No.1.

8.1 The record further reveals that the loan account of defendant-respondent No.2 had already been declared NPA on 30.11.2019 and thereafter possession of the mortgaged property had been taken by the secured creditor under the provisions of the

SARFAESI Act. Thereafter, the property was put to auction and the applicant-petitioner emerged as the successful auction purchaser, pursuant to which a sale certificate under Rule 9(6) of the Rules of 2002 was issued in his favour on 27.12.2023. Thus, the applicant-petitioner cannot be said to be claiming a wholly independent or collateral title adverse to the subject matter of the suit. Rather, his rights arise directly from proceedings concerning the very same property which was purchased by applicant in SARFAESI proceedings for default of defendant seller and which also forms the subject matter of the suit for specific performance.

8.2 Furthermore, the applicant-petitioner has specifically alleged that the suit instituted by the plaintiff-respondent No.1 is collusive in nature and has been filed with the object of defeating the rights accrued in favour of the applicant-petitioner through the auction sale under the SARFAESI Act.

9. Without expressing any conclusive opinion on the merits of such allegations, this Court is of the considered view that the applicant-petitioner possesses a direct and substantial interest in the subject matter of the suit and any decree passed in the suit is likely to directly prejudice his rights as an auction purchaser.

10. In the considered opinion of this Court, if the applicant-petitioner is excluded from the proceedings, there exists a serious possibility of conflicting decrees and multiplicity of litigation. Any decree for specific performance passed in the absence of the applicant-petitioner may subsequently become the subject matter of independent proceedings initiated either by or against the auction purchaser, thereby leading to multiplicity and uncertainty regarding title and possession over the suit property. The presence

of the applicant-petitioner before the learned Trial Court would therefore enable the Court to effectually, completely and finally adjudicate upon all questions directly arising in relation to the suit property.

11. The learned Trial Court, while rejecting the application for impleadment, proceeded solely on the premise that in a suit for specific performance only the parties to the agreement can be impleaded and that the applicant-petitioner, being a stranger to the agreement, had no right of impleadment. In the considered opinion of this Court, the learned Trial Court has adopted an unduly narrow and restrictive interpretation of Order 1 Rule 10 CPC without appreciating the subsequent evolution of law explained by the Hon'ble Supreme Court in ***Mumbai International Airport*** *(supra)* and ***J.N. Real Estate*** *(supra)*.

12. Therefore, this Court is of the considered opinion that the applicant-petitioner is at least a proper party, if not a necessary party, to the suit proceedings, inasmuch as his presence before the Court is essential for complete, effective and final adjudication of the controversies relating to the suit property and for avoiding conflicting decrees and multiplicity of proceedings. The impugned order dated 11.07.2025 passed by the learned Trial Court thus cannot be sustained in the eyes of law.

13. Consequently, the present writ petition is **allowed**. The impugned order dated 11.07.2025 passed by the learned Additional District Judge No.4, Kotputli, District Kotputli-Behror, is hereby quashed and set aside. The application filed by the applicant-petitioner under Order 1 Rule 10 read with Section 151 CPC stands allowed.

14. The learned Trial Court is directed to implead the applicant-petitioner as a party-defendant in the suit proceedings and thereafter proceed with the matter in accordance with law.

15. It is made clear that this Court has not expressed any opinion on the merits of the rival claims of the parties and all issues shall remain open for adjudication before the learned Trial Court independently and in accordance with law.

16. Pending application(s), if any, stands disposed of.

(BIPIN GUPTA),J

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