

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Deepak Gupta, J.)

SONAM JOSHI

Vs.

VINOD KUMAR SAHNEY AND OTHERS

CR-143-2019

Decided on : 17-07-2026

A. Civil Procedure Code, 1908 — Order 1 Rule 10 — Impleadment of parties in suit for specific performance — Suit for specific performance of agreement to sell filed by plaintiff against vendor — Third parties claiming independent title through succession from deceased grandmother, alleging Will set up by vendor forged, sought impleadment — Held, suit for specific performance confined to enforceability of contract between contracting parties — Court not required to adjudicate rival claims of title set up by strangers to contract — Applicants neither necessary nor proper parties. [Paras 8, 9, 10]

B. Civil Procedure Code, 1908 — Order 1 Rule 10 — Necessary and proper party — Test — Necessary party is one in whose absence no effective decree can be passed; proper party is one whose presence assists complete adjudication of questions in the suit — Even proper party must have direct nexus with controversy in suit — Person cannot be added merely because he asserts independent claim over subject property. [Para 12.2]

C. Specific Relief — Necessary parties in suit for specific performance — Following *Kasturi v. Iyyamperumal*, (2005) 6 SCC 733, necessary parties are: (i) parties to contract or their legal representatives; and (ii) transferee pendente lite or subsequent purchaser claiming under vendor — Person asserting title adverse to both plaintiff and defendant is neither necessary nor proper party; remedy lies in independent suit for declaration. [Paras 11, 12.3, 12.4]

D. Civil Procedure Code, 1908 — Order 1 Rule 10 — "Questions involved in the suit" — Scope — Phrase refers only to questions arising between parties to litigation, not collateral title disputes raised by strangers — Avoidance of multiplicity of proceedings cannot be invoked to enlarge

scope of suit beyond controversy arising from contract — Pendency of independent title suit does not justify impleadment. [Para 14]

E. Civil Procedure Code, 1908 — Order 1 Rule 10 — Effective decree test — Where controversy between plaintiff and defendant regarding agreement to sell can be effectively adjudicated without determining rival title claimed by third parties, their impleadment unwarranted — Decree for specific performance would remain subject to rights, if any, established by third parties in independent proceedings. [Paras 16, 17]

F. Constitution of India, 1950 — Article 227 — Supervisory jurisdiction — Interference with order allowing impleadment — Trial Court allowing impleadment on ground of avoiding multiplicity of litigation, contrary to binding precedent — Held, order suffers from material irregularity in exercise of jurisdiction, warranting interference — Revision allowed; impleadment application dismissed; observations not to affect merits of independent title suit. [Paras 18, 19, 20]

Counsel for Appearing Parties

Mr. Vaibhav Sehgal, Advocate, for the Appellant; Mr. D.D. Singla, Advocate, for the Respondent No.1; Mr. Parveen Chauhan, Advocate, for respondents No.2 & 3.

JUDGMENT

Deepak Gupta, J. - The plaintiff has invoked the revisional/supervisory jurisdiction of this Court under Article 227 of the Constitution, to assail the order dated 23.10.2018 (Annexure P-7) passed by the learned Civil Judge (Junior Division), Ludhiana, whereby an application filed by respondents No.2 and 3 under Order I Rule 10 read with Section 151 CPC, in Civil Suit N: CS-4691-2017 titled '**Sonam Joshi vs Vinod Kumar**', has been allowed and they have been ordered to be impleaded as defendants in a suit for specific performance.

2. The petitioner-plaintiff instituted a suit for possession by way of specific performance of an agreement to sell dated 26.02.2016 allegedly executed by respondent No.1-defendant in respect of the suit property. During the pendency of the suit, respondents No.2 and 3 moved an application under Order I Rule 10 CPC asserting that the property originally belonged to their grandmother, namely, Sumitra Devi, who had died intestate and, consequently, they along with respondent No.1 had inherited the property to the extent of one-half share each. It was further pleaded that the Will set up by respondent No.1 in support of his exclusive ownership was forged and fabricated and that they had already instituted an independent suit challenging the said Will and claiming declaration, joint ownership and consequential reliefs. On these premises, they asserted that they were necessary parties to the present proceedings.

3. The application was contested by the plaintiff by specifically pleading that the suit is founded exclusively upon the agreement to sell dated 26.02.2016 executed by respondent No.1; that respondents No.2 and 3 are complete strangers to the contract; and that the controversy sought to be introduced by them pertains to an independent

dispute of title, which cannot be adjudicated in a suit for specific performance. The defendant also opposed the application by asserting that he had become exclusive owner of the property on the strength of a registered Will executed by Sumitra Devi and that the applicants had no subsisting right in the property.

4. The learned trial Court, by the impugned order, accepted the application observing that the applicants were claiming rights in the suit property and that their impleadment would facilitate complete adjudication of the controversy and avoid multiplicity of proceedings. Aggrieved thereby, the plaintiff has preferred the present revision petition.

5. Learned counsel appearing for the petitioner has vehemently contended that the impugned order is contrary to the settled principles governing impleadment of parties in a suit for specific performance. It is argued that respondents No.2 and 3 admittedly are not parties to the agreement to sell and claim an independent title adverse to both the plaintiff and the defendant. Reliance has principally been placed upon the judgment of the Hon'ble Supreme Court in **Kasturi v. Iyyamperumal and others (2005) 6 SCC 733 : 2005 (2) RCR (Civil) 690**, to contend that such persons are neither necessary nor proper parties to a suit for specific performance and that the trial Court has committed a jurisdictional error in permitting their impleadment. Ld. Counsel for the respondents N: 2 & 3, on the other hand, defended the impugned order.

6. I have heard learned counsel for the parties and have carefully perused the record.

7. The revision petition deserves to be allowed for the reasons recorded hereinafter. The sole question that arises for consideration is whether the trial Court was justified in allowing the application under Order I Rule 10 CPC and impleading respondents No.2 and 3 (applicants before the trial Court) as defendants in a suit for specific performance instituted by the plaintiff against the vendor.

8. The answer has to be in the negative. A perusal of the plaint reveals that the suit is one for specific performance of an agreement to sell dated 26.02.2016 allegedly executed by the sole defendant in favour of the plaintiff. The relief claimed is confined to enforcement of the contractual obligations arising out of the said agreement. Admittedly, the applicants sought to be impleaded, are not parties to the agreement to sell. Their claim is founded on an independent title to the suit property on the basis of succession from their grandmother, whereas the defendant asserts exclusive ownership under a Will allegedly executed by the deceased. Thus, the dispute sought to be introduced by the applicants is wholly independent of the contract sought to be enforced in the present suit.

9. The trial Court has proceeded on the reasoning that since the applicants claim ownership in the property and another civil suit regarding title is pending between the parties, their impleadment would avoid multiplicity of litigation and enable complete adjudication of the controversy. Such reasoning cannot be sustained in law.

10. It is now well settled that in a suit for specific performance, the scope of enquiry is limited to the enforceability of the agreement between the contracting parties. The Court is not expected to adjudicate upon rival claims of title set up by strangers to the contract.

11. The controversy involved in the present revision is no longer *res integra*. In **Kasturi v. Iyyamperumal** (supra), the plaintiff had instituted a suit for specific performance of an agreement to sell against the vendor. During the pendency of the suit, certain third parties sought impleadment under Order I Rule 10 CPC on the plea that they were the real owners of the suit property and that the vendor had no right or title to execute the agreement. The trial Court rejected the application, whereas the High Court allowed their impleadment. Reversing the order of the High Court, the Hon'ble Supreme Court exhaustively examined the scope of Order I Rule 10 CPC in the context of suits for specific performance.

12.1 The Supreme Court observed that the controversy in a suit for specific performance is essentially contractual in nature. The Court is only required to determine whether a valid and enforceable contract exists between the parties thereto and whether the plaintiff is entitled to its enforcement. Such a suit is not intended to decide complicated questions of title between persons claiming independently of the contracting parties.

12.2 After examining the provisions of Order I Rule 10 CPC, the Supreme Court held further that a person can be impleaded only if he is either a necessary party or a proper party. A necessary party is one in whose absence no effective decree can be passed, whereas a proper party is one whose presence may assist the Court in effectively and completely adjudicating the questions involved in the suit. However, even a proper party must have a direct nexus with the controversy arising in the suit itself. A person cannot be added merely because he has an independent claim over the subject matter of the property.

12.3 The Supreme Court thereafter laid down the governing principles in clear terms. It held that in a suit for specific performance, the necessary parties ordinarily are:

- (i) the parties to the contract or their legal representatives; and
- (ii) a transferee pendente lite or a subsequent purchaser claiming under the vendor whose rights are directly affected by the decree.

12.4 Conversely, it was held, a person claiming an independent title adverse both to the plaintiff and the defendant is neither a necessary nor a proper party. His claim does not arise out of the contract sought to be enforced but from an altogether independent source. Permitting such a person to be impleaded would enlarge the scope of the suit, convert a simple contractual dispute into a title suit and compel the Court to adjudicate issues wholly foreign to the relief of specific performance. The Supreme Court further observed that if such third parties claim ownership over the property, their remedy is to institute independent proceedings for declaration of title and appropriate consequential reliefs, and not to intervene in a pending suit for specific performance.

13. The ratio of the aforesaid judgment squarely governs the facts of the present case. The applicants sought to be impleaded do not claim any right through the defendant. On the contrary, they assert an independent title by pleading that the property devolved upon them by succession after the death of their grandmother and that the Will propounded by the defendant is forged and fabricated. Thus, the controversy sought to be introduced by them pertains to succession, validity of the Will and ownership of the

property, none of which arises from or is incidental to the agreement to sell dated 26.02.2016 forming the foundation of the present suit. Their claim is therefore wholly independent and adverse to both the contracting parties.

14. The learned trial Court, while allowing the application, has been swayed by the consideration that impleadment would avoid multiplicity of litigation and facilitate complete adjudication of all disputes relating to the property. This approach is legally unsustainable. As held in **Kasturi** (supra), the concept of avoiding multiplicity cannot be invoked to enlarge the scope of a suit beyond the controversy arising from the contract. The "questions involved in the suit" occurring in Order I Rule 10 CPC refer only to the questions arising between the parties to the litigation and not to collateral disputes relating to title set up by strangers to the contract. Therefore, the existence of an independent title dispute or pendency of another suit between the parties cannot by itself justify impleadment in a suit for specific performance.

15. If the applicants are permitted to contest the present proceedings, the Court would necessarily be required to determine whether Sumitra Devi died intestate, whether the alleged Will is genuine, what shares devolved upon the parties, and who is the true owner of the property. These issues are wholly foreign to the controversy arising from the agreement to sell and are already the subject matter of a separate proceedings between the parties. The adjudication of such questions would completely alter the nature and character of the present suit.

16. It is also important that any decree passed in the present suit would not conclude the independent title claimed by the applicants. If ultimately the applicants succeed in establishing their ownership in the independent proceedings, the decree for specific performance would remain subject to the rights declared therein. Conversely, if they fail in establishing their title, their impleadment in the present suit would have served no legal purpose except for delaying adjudication of the contractual dispute. Therefore, their presence is neither necessary for passing an effective decree nor proper for complete adjudication of the issues arising in the suit.

17. The test under Order I Rule 10 CPC is whether, in the absence of the proposed party, an effective decree can be passed or not. The answer, in the present case, is clearly in the affirmative. The controversy between the plaintiff and the defendant regarding the agreement to sell can be effectively adjudicated without determining the rival title as claimed by the applicants.

18. The impugned order, therefore, proceeds on an erroneous understanding of the law governing impleadment of parties and is contrary to the binding precedent of the Hon'ble Supreme Court in **Kasturi** (supra). The exercise of jurisdiction by the trial Court thus suffers from material irregularity warranting interference under Article 227 of the Constitution.

19. Accordingly, the present revision petition is allowed. The order dated 23.10.2018 (Annexure P-7) passed by the Trial Court, allowing the application under Order I Rule 10 CPC is hereby set aside. Consequently, the application filed by respondents No.2 and 3 for impleadment stands dismissed.

20. It is, however, clarified that nothing observed herein shall be construed as an expression on the merits of the rival claims of title as set up by the applicants in the independent proceedings pending between the parties. Their rights shall be determined uninfluenced by any observations made in this order.

21. The trial Court shall proceed with the suit for specific performance expeditiously in accordance with law.