

A HARI MOHAN SHARMA & ANR.  
v.  
CHARANJEET SINGH REKHI & ORS. ETC.  
(Civil Appeal Nos. 11029-30 of 2018)

NOVEMBER 16, 2018

B [R.F. NARIMAN AND NAVIN SINHA, JJ.]

*Party/Parties: Necessary party – Suit for specific performance – Determination of correct defendants – Issue arose whether one CS and his wife who are defendant no. 2 & 3 in one group of SLP and defendant no. 1 & 2 in other group of SLP are persons who do not purport to be who they say they are – I.As had been filed by two other CS one belonging to Moradabad and other to Uttarakhand stating that each one of them are defendant no. 1 and 2 and defendant no. 2 and 3 respectively in the suits – Single Judge of the High Court held that a question of mistaken identity cannot be gone into in a specific performance suit, and that the plaintiff does not claim anything against the persons who have filed the I.As but only against one CS, who belongs to Delhi (since deceased), and his wife MK who is in US – Division Bench set aside the order – On appeal held: Plaintiff in both the suits for specific performance is dominus litus and has chosen CS who resides in Delhi (since deceased) and his wife MK as persons against whom the lis exists – It was pleaded that the persons mentioned defendant nos. 1 & 2 and defendant nos. 2 & 3 in the two suits are, in fact, the persons mentioned in the two I.As – Plaintiff has no lis against such persons – Thus, the persons in the I.As are neither necessary nor proper parties in the present adjudication – Order passed by the Division Bench is set aside and that of the Single Judge of the High Court is restored.*

*Sumtibai & Others v. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors. [2007] 10 SCR 543 – distinguished.*

*Kasturi v. Iyyamperumal and Others (2005) 6 SCC 733 – referred to.*

**Case Law Reference**

H	[2007] 10 SCR 543	distinguished	Para 7
	(2005) 6 SCC 733	referred to	Para 7

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REKHI

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11029- A  
11030 of 2018.

From the Judgment and Order dated 07.07.2014 of the High Court  
of Delhi at New Delhi in FAO(OS) Nos.213/2013 and 235/2013.

With

Civil Appeal Nos. 11031-11033 of 2018. B

Parag P. Tripathi, Sr. Adv., Mrs. Neelima Tripathi, K. V. Mohan,  
Ms. Gunjan Singh, Joydip Bhattacharya, Hitesh Kumar, Lalltaksh Joshi,  
Abid Ali Beeran P, M. Qyamuddin, Wajeesh Shafiq, Mukesh K. Verma,  
Rajeev Kumar, Manu Parkash Upadhyay, Anis Ahmed Khan, Advs. for C  
the appearing parties.

The Judgment of the Court was delivered by

**R. F. NARIMAN, J.** 1. Leave granted.

2. In both these cases, suits for specific performance have been D  
filed. The narrow question that arises is whether one Charanjeet Singh  
Rekhi and his wife - Manjit Kaur, who are Defendant Nos. 2 & 3 in SLP  
(C) Nos. 32725-32726 of 2014 and Defendant Nos. 1 & 2 in SLP (C)  
Nos. 28958-28960/2014 are persons who do not purport to be who they  
say they are. This arises out of I.As that have been filed by two other  
Charanjeet Singh Rekhis', one belonging to Moradabad and the other E  
belonging to Uttarakhand, stating that each one of them are Defendant  
Nos. 1 & 2 and Defendant Nos. 2 & 3 respectively in these suits, and  
considering that it should conclusively be determined as to who the correct  
defendants are, they are necessary parties to both specific performance  
suits. F

3. The learned Single Judge of the High Court of Delhi, by judgment  
dated 05.03.2013, held that a question of mistaken identity cannot be  
gone into in a specific performance suit, as the persons who have filed  
the I.As are either necessary or proper parties to the suits for the reason  
that the plaintiff does not claim anything against them but only against G  
one Charanjeet Singh Rekhi, who belongs to Delhi, and who has since  
died. His wife, Manjit Kaur, is no longer in India and resides in the  
United States. Both the I.As were, therefore, dismissed.

4. In an appeal filed to the Division Bench, this judgment was  
reversed stating: H

A “35. It is contended that the appellants are not parties to the  
contract and therefore, are not necessary parties in a suit for  
specific performance of the contract. In our view, treating the  
appellants as separate from Charanjeet Singh Rekhi & Manjit  
B Kaur Rekhi would be an erroneous assumption as their application  
under Order 1 Rule 10(2) is premised on the basis that they are  
Charanjeet Singh Rekhi & Manjit Kaur Rekhi or are claiming  
through them. Indisputably, Charanjeet Singh Rekhi & Manjit  
C Kaur are parties to the contract which is sought to be specifically  
enforced. The appellants may not have signed the contract but  
are claiming to be the persons who are named therein. In this  
D situation, would it be open for the respondents to contend that the  
appellants who claim to be Charanjeet Singh Rekhi & Manjit Kaur  
E Rekhi are not parties to the contract. We think not. The very  
assumption that the parties to the contract are persons other than  
the appellants or their predecessors is the controversy that has  
been raised by the appellants. The only question that thus arises  
is whether this controversy has to be decided in the present suits  
or whether the appellants are to be relegated to filing separate  
suit(s). It is obvious that this controversy would have to be settled  
in order that the controversy with regard to any agreement entered  
into by the Charanjeet Singh Rekhi & Manjit Kaur Rekhi can be  
decided. Thus, in our view, it would be apposite if this controversy  
is decided in the present suit in order that all the disputes in the  
present suit can be effectively adjudicated.”

5. Having heard learned counsel for the parties, we are of the  
view that the Single Judge is correct. The plaintiff in both the suits for  
F specific performance is *dominus litus* and has chosen Charanjeet Singh  
Lekhi who resides in Delhi (since deceased) and his wife Manjit Kaur  
as persons against whom the *lis* exists.

6. It is clear that if ultimately it is found that there is no cause of  
action against either of these people, his suit will fail; or if it is found, in  
G execution proceedings, that the aforesaid persons have nothing to do  
with the agreement to sell in question, such execution proceedings will  
fail. That is the risk that the plaintiff takes in these matters. It is clear,  
therefore, that persons who state that they happen to be Defendant  
Nos. 1 & 2 and Defendant Nos. 2 & 3 respectively in the two suits are  
persons who have to take independent proceedings against the said  
H

defendants and/or the plaintiff if they allege collusion between the plaintiff and the defendants. A

7. Learned counsel appearing on behalf of the respondents has supported the impugned judgment and has cited to us a judgment dated 04.10.2007 in Civil Appeal No. 117 of 2001 titled Sumtibai & Others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors. B  
in which this Court has stated that there can be no absolute proposition that whenever a suit for specific performance is filed, a third party can never be impleaded in that suit. These observations were made in the context of a sale deed that had been entered into with one Kapoor Chand and his two sons. After Kapoor Chand died, his two sons wished to take up certain additional pleas in an additional written statement sought to be filed by them. This was ultimately allowed by this Court, stating that the registered sale deed itself shows that the purchaser was not Kapoor Chand alone, but also his sons as co-owners. Hence, *prima facie*, the sons of Kapoor Chand are also co-owners of the property in dispute and, therefore, have some semblance of title. It was in this fact situation that the judgment in Kasturi vs. Iyyamperumal and Others, (2005) 6 SCC 733 was distinguished. C  
D

8. We are of the view that the aforesaid judgment has no application on the facts of the present case. The case pleaded before us is that the person mentioned as Defendant Nos. 1 & 2 and Defendant Nos. 2 & 3 in the two suits are, in fact, the persons mentioned in the two I.As. This being clear, the plaintiff in the specific performance suit has no *lis* against such persons, and have chosen to have a *lis* only against Defendant Nos. 1 & 2 and 2 & 3 (original). E

9. This being the case, it is clear that the persons in the I.As are neither necessary nor proper parties in the present adjudication. F

10. The appeals are, accordingly, allowed and the Division Bench judgment is set aside and restored to that of the single Judge.