

M/s J N Real Estate

v.

Shailendra Pradhan & Ors.

(Civil Appeal No(s). 5405-5406 of 2025)

22 April 2025

[J.B. Pardiwala* and R. Mahadevan, JJ.]

Issue for Consideration

Whether the High Court was justified in setting aside the order passed by the Trial Court impleading the appellant as one of the defendants in the suit instituted by the original plaintiff for specific performance of the agreement to sell.

Headnotes[†]

Civil Procedure Code, 1908 – Or.1, r.10 – ‘Proper party’ *vis-à-vis* ‘necessary party’ – Subsequent purchaser – Suit for specific performance – Appellant sought impleadment as defendant in the suit instituted by the original plaintiff for specific performance of the agreement to sell – Allowed by Trial Court – Order set aside by High Court – Interference with:

Held: A party seeking impleadment may not be a necessary party but still, could be 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 – In the instant case, the presence of the appellant in the suit is required for proper and effective adjudication of the dispute in the suit – Also, the original plaintiff did not oppose the impleadment of the appellant in his suit – High Court should not have interfered with the order passed by the Trial Court impleading the appellant as one of the defendants as the genuineness of the transaction, if any, including the genuineness

* Author

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of the documents is to be looked into during the trial – Impugned orders passed by the High Court set aside, order of Trial Court restored. [Paras 32-34]

Case Law Cited

Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. [2010] 7 SCR 790 : (2010) 7 SCC 417; *Kasturi v. Iyyamperumal* [2005] 3 SCR 864 : (2005) 6 SCC 733; *Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)* [2007] 10 SCR 543 : (2007) 10 SCC 82 – referred to.

List of Acts

Code of Civil Procedure, 1908; Constitution of India.

List of Keywords

Order 1 Rule 10 of the Civil Procedure Code, 1908; Impleadment; Impleadment as defendants; Subsequent purchaser; Proper party; Necessary party; Suit for specific performance; Impleadment in suit for specific performance; Will; Testator; Agreement to sell; Cancellation of probate certificate; Probate certificate; Supervisory jurisdiction; Article 227 of the Constitution of India.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 5405-5406 of 2025

From the Judgment and Order dated 12.12.2023 and 12.06.2023 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in RP No. 717 of 2023 of MP No. 5567 of 2018, respectively

Appearances for Parties

Advs. for the Appellant:

C.U. Singh, Gaurav Agarwal, Sr. Advs., S.Sukumar, Sreegesh M.K., Anand Sukumar, Bhupesh Kumar Pathak, Mrs. Ruche Anand.

Advs. for the Respondents:

Navin Pahwa, Sr. Adv., Vivek Singh, Ritik Dwivedi, Ms. Tanvi Anand, Ms. Rida Shafique, Ms. Prerna Priyadarshini, Syed Faraz Alam, Atharva Gaur, Aayushman Aggarwal.

M/s J N Real Estate v. Shailendra Pradhan & Ors.**Judgment / Order of the Supreme Court****Order****J.B. Pardiwala, J.**

1. Leave granted.
2. These appeals arise from the orders passed by the High Court of Madhya Pradesh at Jabalpur dated 12.12.2023 and 12.06.2023 respectively, in Review Petition No. 717 of 2023 and Miscellaneous Petition No.5567/2018 respectively, by which the petition filed by the respondent No.1 herein (original defendant no. 4) came to be allowed and thereby the order dated 14.03.2018 passed by the Trial Court impleading the present appellant as one of the defendants in the suit came to be quashed and set aside.
3. For the sake of convenience, the appellant herein shall be referred to as the original defendant No.8, respondent No.1 herein shall be referred to as the original defendant No.4 and the respondent No.2 herein as the original plaintiff.
4. It is the case of the defendant no. 8 that one (Late) Mr. Indramohan Pradhan executed a will dated 03.02.2001 pertaining to the suit property in favour of one (Late) Mr. Sameer Ghosh (original defendant no. 3) who took care of him during his old age and ailing health. The original defendant no. 3 had applied for obtaining a probate on the basis of the said Will in the Court of the 9th Additional District Judge, Bhopal, Madhya Pradesh and the same was allowed *vide* order dated 28.04.2005. A probate certificate dated 13.05.2005 with respect to the Will dated 03.02.2001 was also granted to the original defendant no.3.
5. Thereafter, it is stated that the original defendant no. 3 entered into an agreement to sell with respect to the same property in favour of the original defendant no. 8 for a sum of Rs. 78 Lakh, which was paid in two installments of Rs. 59 Lakh and Rs. 19 Lakh respectively. It is argued that a sale deed dated 30.05.2009 was also executed to that effect. However, the same came to be registered only on 29.03.2014. In such circumstances, the original defendant no. 8 contends that by virtue of the aforesaid sale deed, the title, interests and rights associated with the suit property were transferred its favour.

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6. On the other hand, it is the case of the original plaintiff that the testator i.e., Mr. Indramohan Pradhan executed a different Will dated 07.07.2001 in favour of his two sons i.e., original defendant nos. 1 and 2, whereby the suit property was bequeathed to them. Thereafter, the original defendant nos. 1 and 2 entered into an agreement to sell dated 05.11.2006 with the original plaintiff, through which he obtained all rights with respect to the suit property.
7. Although the original defendant no. 4, who is the brother of the testator, agrees with the original plaintiff that the sons of the testator, i.e., original defendant nos. 1 and 2 respectively, acquired rights with respect to the suit property through the will dated 07.07.2001, yet it is his case that the sons had subsequently, entered into an agreement to sell dated 18.05.2007 with respect to the same suit property in his favour instead.
8. Therefore, we have three different parties asserting their individual title over the suit property.
9. It appears from the materials on record that, on 01.10.2007, the original plaintiff, namely Adarsh Malhotra, has instituted Regular Civil Suit No. 360-A/2007 in the Court of 8th District Judge, District-Bhopal for specific performance of the agreement to sell dated 05.11.2006 in his favour and for permanent injunction. In the said suit, he has prayed for the following reliefs:
 - (a) *It be declared that the Will dated 03.02.2001 is a fake and the probate order dated 28.4.2005 based on it and the probate given on 13.5.2005 are void.*
 - (b) *That on the basis of the agreement dated 05.11.2006, for specific performance of the contract in favor of the plaintiff, a decree should be granted against defendants No. 1 and 2 that they should execute the sale deed in favor of the plaintiff and if the sale is not executed within a certain period, the Honorable Court should execute the sale deed in favor of the plaintiff on their behalf.*
 - (c) *That a permanent injunction should be granted against the defendants to the effect that the defendants should not transfer the land under dispute in any way or enter into an agreement for transfer.*

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- (d) *That the litigation expenses and other relief which the Honorable Court deems appropriate and necessary should be awarded to the plaintiff.*
- (e) *That the sale deed dated 30/05/2009 executed by defendant number 3 in favor of defendant number 8, which is recorded in the Sub Registrar's office in Book No. A-1, Volume 2296, Page 85-93, Serial 3/1920 dated 29/03/2014 (whereas the defendant is stating the date as 30/05/2009) should be declared void."*
10. The materials on record also indicate that two separate suits were filed by the original defendant no. 4 (respondent no. 1 herein) pertaining to the same controversy. They are:- MJC No. 66/2008, seeking cancellation of the probate certificate dated 13.05.2005 issued in favour of the original defendant no. 3 and, Regular Civil Suit No. 401-A/2010 for specific performance of agreement to sell dated 18.05.2007 in his favour, declaration and permanent injunction.
11. In all the aforesaid three suits, the original defendant no. 8 preferred an application under Order 1 Rule 10 of the Civil Procedure Code, 1908 (for short "the C.P.C.") seeking to be impleaded as one of the defendants. However, in the present appeals, we are only concerned with the impleadment application made by the original defendant no. 8 in the suit instituted by the original plaintiff for specific performance and injunction i.e., Regular Civil Suit No. 360-A/2007.
12. Having regard to the peculiar facts of the present litigation, we deem it necessary to reproduce the entire application preferred by the appellant herein. The same reads thus:
- "1. That the applicant is the owner of agricultural land Khasra No. 54/2, 72/2, 73, 87-88/2/3, 91, total 2.67 hectares i.e. 6.44 acres, situated in Village Ahmed Kalan Patwari Halka Number-20, R.N.M.2 Development Block- Phanda Tehsil Huzur District Bhopal.*
- 2. That in this case it is not disputed that the land originally belonged to Indramohan Pradhan. The land was given to Sameer Ghosh by Indramohan Pradhan through his last will/ testament dated 03.02.2001. Sameer Ghosh became the owner of the land after his death as per the will of Indramohan.*

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3. That the Probate certificate dated 13.05.2005 was issued by the Court-Ninth Additional District Judge, Bhopal in the name of Sameer Ghosh on the basis of the last will of Late Indramohan Pradhan. After that, Akshat Pradhan, Anant Pradhan and Shelendra Pradhan no longer had the right to take any action regarding the disputed land. Akshat, Anant Pradhan no longer had any right to enter into any contract regarding the disputed land. The plaintiff has filed this suit on 04.10.2007, seeking the relief of specific performance of the contract dated 05.11.2006. After the issue of probate certificate dated 13.05.2005, if any agreement made by Akshat Pradhan, Anant Pradhan or anyone else in relation to the disputed land is void and ineffective.

4. That the said property has been purchased by the applicant through registered sale deed dated 30-05-2009 and since then the applicant firm is the sole owner of the said property. The property owned by the applicant has been purchased by the applicant by paying an amount of Rs 78,00,000/- (Rupees seventy eight lakhs). The applicant firm is the owner of the land and no other person other than the applicant has any right on the land.

5. That the applicant had appeared in the court to contact his advocate in some other case and then he came to know that the case related to his land was pending in the Honorable Court. This application is being filed without any delay as soon as the information is received.

6. That the applicant has a substantial interest in the property of 6.44 acres that the applicant has purchased through a registered sale deed. The actual owner of the land is the applicant, hence if the proceedings in the said case are conducted without impleading the applicant to the case, then the applicant will suffer serious loss. In such a situation, for the resolution of the case, it would be necessary in the interest of justice that an order be passed to implead the applicant in order to give him an opportunity to protect his interest in the case.

7. That if any action of any kind is taken against the applicant by Akshat, Anant and Shelendra Pradhan in

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connivance, the applicant will suffer serious loss. There is serious interest in the applicant's case. The applicant has paid the entire amount and got the sale deed of the disputed land executed in his name. The applicant is a bona fide and genuine buyer, information about which is known to the plaintiff and defendants. In such a situation, an order should be passed to implead the applicant, which will be in the interest of justice.

Therefore, it is requested to the Honorable Court that the applicant has serious interests in this case. The applicant has paid the entire amount and got the sale deed of the disputed land executed in its name. The applicant is a bona fide and genuine buyer, information about which is known to the plaintiff and defendants. In such a situation, an order should be passed to implead the applicant, which will be in the interest of justice."

13. It is not in dispute that the original plaintiff thought fit not to oppose the impleadment application preferred by the original defendant no.8, referred to above.
14. The Trial Court adjudicated the application and allowed the same *vide* order dated 14.03.2018. The order allowing the application seeking impleadment reads thus:

"Application under Order 01 Rule-10 CPC

The gist of the application filed by the applicant M/s JN Real Estate, through partner Jaimohan is that the applicant is the owner of agricultural land Khasra No. 54/2, 72/2, 73, 87-88/2/3,91, total 2.67 hectares i.e. 6.44 acres, situated in Village Ahmed Kalan Patwari Halka Number-20, R.N.M.2, Development Block- Phanda Tehsil Huzur District Bhopal. Probate certificate dated 13.05.2005 was issued by the Court-Ninth Additional District Judge, Bhopal in the name of Sameer Ghosh on the basis of the last will of Late Indramohan Pradhan. After that, defendants Akshat Pradhan, Anant Pradhan and Shailendra Pradhan no longer had the right to take any action or enter into any contract with respect to the land under dispute. The plaintiff has filed a claim in the year 2007, seeking the relief of

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specific performance of the contract dated 05.11.2006. After the probate certificate was issued on 13-05-2005, if any agreement has been made by the defendants or anyone else in relation to the land in dispute, then that agreement is void and ineffective. The said property has been purchased by the applicant through registered sale deed dated 30-05-2009 and since then the applicant is the sole owner of the said property. When the applicant appeared in another case, he came to know that the case regarding the said land was pending in the court. The applicant has substantial interest in the said case. Therefore, it is necessary to implead the applicant in the case. Therefore, it has been submitted through this application that the applicant has serious interests in this matter and the applicant has paid the entire amount and got the sale deed of the disputed land executed in his name. The applicant is a bona fide and genuine buyer, information about which is known to the plaintiff and defendants. Therefore, a prayer has been made to pass orders to implead the applicant in the said case.

While submitting the written reply to the said application on behalf of the plaintiff, it has been expressed that on 12-02-2008, the defendant numbers 01 and 02 are trying to sell the land under dispute to the applicant. An application was filed in the case under Order-01, Rule-01 CPC to implead the applicant in the case, a copy of which was sent to the applicant by the court, which the applicant did not receive. Then on the orders of the court, service was done through publication on 11.04.2011, but even after that the applicant did not appear in the court and present his case. The said application filed by the plaintiff at that time was also opposed by defendant no. 03, on the basis of which the applicant was not impleaded as a party as per the court order dated 06-08-2013. The plaintiff has been ready from the very beginning to implead the applicant to the suit, because the sale deed of the disputed land has been executed by defendant number 03 in favor of the applicant. Therefore, the plaintiff has no objection in allowing the application and impleading the applicant in this suit.

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On behalf of defendant no. 04, it has been expressed in detail in written reply to the above application filed by the applicant that the applicant is neither a necessary party to the suit filed by the plaintiff nor can he be made a party to the suit. This application has been filed on the basis of the sale deed dated 30-05-2009, which was registered on 29.03.2014, the same has been executed and registered by the Honorable High Court in violation of the writ petition no. 8902/2008 dated 01.08.2008, whereas in the said case the Honorable High Court had passed orders to maintain the status quo. The applicant has not come before the court with clean hands, because he has maliciously got the sale deed registered in his favor and has not respected the order of the Honorable High Court and has disobeyed the said order, on the basis of which, contempt of the order of the Honorable High Court cannot be permitted by allowing this application. Apart from this, a prayer has been made on behalf of defendant no. 04 to dismiss this application filed by the applicant on various grounds.

Arguments were heard on the applications of both the parties. The entire suit was reviewed.

Considered. According to the applicant, he had purchased the disputed property for Rs. 78,00,000/- through a registered sale deed dated 30.05.2009. In such a situation, if any decision is passed regarding the property, its effect will be on the applicant.

In reply, the plaintiff has expressed that he had already come to know that an attempt was being made to sell the property to the applicant, then the plaintiff had tried to implead the applicant and for this, a copy of application under Order 01, Rule 10 CPC was sent to the applicant, which was not taken by the applicant even after being sent repeatedly by the court and then it was also published in the daily newspaper by the court, still the applicant did not appear. The applicant did not give any proper reply to the above reply given by the plaintiff. In such a situation, the application filed by the applicant under Order 01, Rule 10 CPC is allowed at a cost of Rs 1000/-.

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The name of the applicant should be added to the memo of parties as defendant number 08. Necessary action should be taken in this regard.

From the observation of the case, it is also found that although the Issues were framed twice, there are still many Issues that need to be framed, in respect of which pleadings already exist. Therefore, today additional issues were framed and read to both the parties. Additional Issue Nos.11 to 15 were framed. Issue No.14 will be resolved as a primary issue.

The case is fixed for argument on the primary issue and for legally incorporating the name of the proposed party.

Put up the case on 21.03.2018.”

15. Similarly, the Trial Court had also allowed the applications of the original defendant no. 8 seeking impleadment in MJC No. 66/2008 and Regular Civil Suit No. 401-A/2010 on 12.02.2018 and 07.08.2018, respectively, i.e. in the two other suits wherein the original defendant no. 4 was the plaintiff. Aggrieved, the original defendant no. 4 challenged all the three orders of the Trial Court before the High Court via separate petitions.
16. In so far as the suit filed by the original plaintiff which is the subject matter of the present appeals is concerned, a noteworthy aspect is that it is the defendant No.4 and not the original plaintiff who thought fit to question the legality and validity of the order passed by the Trial Court permitting the original defendant no. 8 (appellant herein) to be impleaded as one of the defendants.
17. The High Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, 1950 thought fit to look into the challenge at the instance of the original defendant No.4 and set aside the order passed by the Trial Court impleading the original defendant no. 8 as one of the defendants in the suit instituted by the original plaintiff i.e., Regular Civil Suit No. 360-A/2007. As a consequence, the High Court also allowed the petitions of the original defendant no. 4 as regards the two other suits wherein he is the plaintiff and set aside the orders of the Trial Court.
18. At this stage, we should also reproduce the entire impugned order passed by the High Court which reads thus:

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“This miscellaneous petition has been filed by the petitioner/defendant No.4 under Article 227 of the Constitution of India being aggrieved with the order dated 14.03.2018 passed by learned District Judge Bhopal (Shailendra Shukla) in RCS No. 360 - A/2007 allowing an application under Order 1 Rule 10 of the CPC and permitting the respondent 8 to be added a party to the lis.

Shri Zargar submits that the suit is filed by the plaintiff / respondent No.1 for cancellation of Will and consequential action in favour of the respondent No.4. The present petitioner has filed another suit RCS No.401-A/2007 seeking similar reliefs. It is submitted that application under Order 1 Rule 10 CPC has been allowed on the strength that there is a registered sale deed in favour of the newly added respondent executed by one Mr. Sameer Ghosh who claims to have obtained the suit property on the strength of the Will of late Indra Mohan Pradhan.

Respondent No.8 has though filed a reply and in paragraph 9 of the reply has taken a specific plea that he had entered into an agreement to sale with respondent No.4 Sameer Ghosh and paid a sum of Rs.59 Lacs in November 2007 itself and balance amount was paid on 29.05.2009 and 30.05.2009 and thereafter a registered sale deed was executed by the present respondent No.4 in favour of the present respondent No.8 on 30.05.2009. But the fact of the matter is that the document Annexure R-5 relied upon by Shri Pancholi in support of his contention, is not a registered sale deed. Shri Pancholi submitted that the agreement was executed in the year 2007 and registered sale deed was executed subsequently in the year 2014 but this fact is not made out from the documents available on record. Shri Pancholi has relied on a receipt affixed from the office of the Sub-Registrar dated 18.9.2014 but that receipt does not contain any detail in regard to having any relation of sale deed enclosed as Annexure R-5. In view of such fact that there is no iota of evidence in favour of the respondent No.8 that he had purchased the suit property through a valid document and he is in possession of the

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same on the strength of legal transaction, I am of the opinion that learned District Judge, Bhopal erred in not appreciating the fact in correct perspective and has passed the impugned order without analysing the fact situation and arbitrary and illegal manner. Such order cannot be given stamp of approval in supervisory jurisdiction of this Court.

At this stage, Shri Pancholi has vehemently argued that there is an agreement for sale but he has not brought so called agreement to sell on record. He has relied on the decision in the case of Tilak Sahakari Grah Nirman Maryadit v. Aqeel Ahmed 2020 (1) MPLJ 332 but fact of the matter remains that the respondent No.8 has not bothered to place on record a copy of the said agreement to sell. Therefore, merely on the basis of oral submission of the counsel no indulgence can be shown and, therefore, in the absence of agreement to sell on record, it cannot be said or presumed that any agreement to sell exists in favour of the respondent No.8.

Taking all these facts into consideration, the petition is allowed and the impugned order is set aside. This order will also cover disposal of similar controversy raised in MP No.5572 of 2018 and MP No.2166 of 2018.”

19. Thereafter, three Review Petitions had been filed by the original defendant no. 8. The High Court by a common impugned order dated 12.12.2023 rejected all the Review Petitions. The order reads thus:

“These review petitions have been filed being aggrieved by a party who was defendant No.8 of MP No.5567 of 2018 on the ground that this Court committed an error on face of record in setting aside the orders of the trial Court entertaining an application under Order I Rule 10 of the CPC. It is submitted that he is a purchaser lis pendens and therefore, he is a necessary party to the lis.

Shri Zargar, in his tum, submits that the High Court vide order dated 01.08.2008 passed in WP No.8902/2008, where transferor Sameer Ghosh was a party, at the instance of one of the parties – Shailendra Pradhan directed the parties to maintain the status quo. Therefore, position of the transferee steps into shoes of the transferor and that

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he has to follow the rights and liabilities of the transferee. Reliance is placed on the judgment of the Hon'ble the Supreme Court in the case of Sunil Gupta v. Kiran Girhotra and Others, (2007) 8 SCC 506 wherein it is held that in probate proceedings, in transfer of property concerned during probate proceedings, impleadment of said transferee to probate proceeding, is not necessary.

Shri Pancholi vehemently submits that in WP No.5567/2018, in fact, the petitioner Shailendra Pradhan is a defendant. The suit is filed by another person seeking specific performance of agreement. Therefore, the present applicant is a necessary party.

After hearing learned counsel for the parties and going through record, as far as MP No. 2166/2018 is concerned it is filed by one Shailendra Pradhan who had filed an application under Section 263 of the Indian Succession Act which was registered as MJC 66/2008 seeking a relief for cancellation of probate issued in favour of the defendant No.1 Sameer Ghosh. Thus, submission made by Shri Pancholi that this case has nothing to do with probate and thus ratio of law laid down by Supreme Court in the case of Sunil Gupta (supra) has no application, is not made out. Since the suit is in regard to cancellation of probate as was issued by the trial Court in favour of Sameer Ghosh and admittedly the review petitioner claims that he purchased the property in question from said Shri Sameer Ghosh, therefore, his rights and liabilities will be governed by rights and liabilities of Sameer Ghosh, as may be decided from time to time. Thus, ratio laid down in case of Sunil Gupta (supra) has application in full force and, therefore, the submission made by Shri Pancholi is not acceptable. Thus, review petition No.718/2023 deserves to and is dismissed.

As far as other two review petitions, namely, RP No.714/2023 and RP No.717/2023 are concerned, in view of the aforesaid discussion, and as there is no material brought on record to show error apparent on the face of the record, no indulgence can be shown. Therefore, these review petitions also fail and are dismissed.”

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20. Being dissatisfied with both the order dated 12.06.2023 in Miscellaneous Petition No. 5567/2018 and the common order in review dated 12.12.2023 respectively, passed by the High Court, which set aside the order impleading him in Regular Civil Suit No. 360-A/2007, the original defendant no. 8 is here before this Court with the present appeals.
21. We heard Mr. C.U. Singh, the learned Senior Counsel appearing for the original defendant no. 8, Mr. Navin Pahwa, the learned Senior Counsel appearing for the original defendant No.4 and Mr. Atharva Gaur, the learned counsel appearing for the original plaintiff.
22. This Court in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, reported in (2010) 7 SCC 417, explained the scope of Order I Rule 10(2) of the CPC. In the unique facts which existed therein, there was a likelihood that the appellant would secure a right/interest in the suit property if the suit for specific performance instituted by the respondent against the Airport Authority of India was dismissed. It was held, that in such a factual circumstance and such being the right asserted by the appellant, it cannot be made a party to the suit for specific performance. While holding so, it was observed that although the general rule is that the plaintiff, being *dominus litis*, may choose the persons against whom he wishes to litigate and seek relief, yet this rule of impleadment would be subject to the provisions of Order I Rule 10(2) wherein courts are vested with the discretion to strike out or add parties to a suit depending on whether their impleadment is deemed necessary or proper. It was held that, even in suits for specific performance, a court may, at any stage of the proceedings, implead a person who is found to be a necessary party or proper party.
23. In *Mumbai International Airport (supra)*, this Court explained the import of the expressions “necessary party” and “proper party” as thus:

“14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person

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whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

(Emphasis supplied)

24. It is limpid in the aforesaid observation that if a party is found to either a necessary or proper party, the court would have the jurisdiction to implead him, even against the wishes of the plaintiff concerned. In *Mumbai International Airport (supra)* another pertinent question that arose was whether there existed any conflict between the three-judge bench decision of this Court in *Kasturi v. Iyyamperumal*, reported in (2005) 6 SCC 733 and the decision of a two-judge bench in *Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*, reported in (2007) 10 SCC 82.
25. In *Kasturi (supra)*, the respondent nos. 1 and 4 to 11 respectively therein, based their claim to be added as party defendants on an independent title and possession of the contracted property. In such a backdrop, while rejecting the applications for impleadment, this Court had expounded the scope of Order I Rule 10(2) CPC

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and laid down certain tests for determining whether a person is a 'necessary party' for the purpose of impleadment in a suit for specific performance as follows:

- (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)

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- (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

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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*

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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)

26. However, this Court, in its subsequent decision in *Sumtibai (supra)*, was faced with a factual scenario wherein the sons of the original defendant were also *prima facie* found to be co-owners of the contracted property. The sons were already impleaded in their capacity of being legal representatives to the deceased defendant who had entered into an agreement to sell in favour of the plaintiff therein. In this background, it was observed that it cannot be laid down as an absolute proposition that in a suit for specific performance, a third party can never be impleaded. It was opined that the decision of this court in *Kasturi (supra)* must be seen in the context in which it was delivered. Furthermore, some circumstantial flexibility is necessary to be taken into account in each case, since an additional or different

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fact may materially change the conclusion. Therefore, the sons of the original defendant were allowed to file an additional written statement and take the defence of co-ownership which was available to them.

27. While distinguishing *Kasturi (supra)*, it was held in *Sumtibai (supra)* that if a third party can show a fair semblance of title or interest, he can file an application for impleadment in the suit for specific performance. The relevant observations read thus:

“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) [...]’

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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

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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.”

(Emphasis supplied)

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.
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. 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. 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:

“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

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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.”

(Emphasis supplied)

30. Having discussed the aforesaid position of law, it would be apposite to look into the reasoning which was adopted by the High Court in its impugned decisions. It appears from the line of reasoning that the High Court entertained a serious doubt on the genuineness of the entire transaction between one (Late) Mr. Sameer Ghosh

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i.e., original defendant no. 3 and the appellant herein *i.e.*, original defendant No.8. (Late) Mr. Sameer Ghosh is said to have obtained a probate on the strength of one particular will and on the strength of that probate he is said to have executed first, an agreement of sale in favour of the original defendant no. 8 and thereafter, a sale deed with respect to the suit property. According to the High Court, this transaction is doubtful. The High Court has gone further to say that the documents *i.e.*, the agreement and the sale deed are also doubtful.

31. In such circumstances referred to above, the High Court thought fit to take the view that the appellant herein is neither a necessary party nor a proper party.
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, 1950. 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.
33. We need not say anything further in the matter. We may only say that insofar as the transaction between (Late) Mr. Sameer Ghosh and the original defendant no. 8 (appellant herein) is concerned, the same shall be a subject matter of trial. We do not express any opinion in this regard at this point of time. We may only say that the presence of the appellant in the suit is required for proper and effective adjudication of the dispute in the suit. We say so while giving additional regard to the fact that the original plaintiff has not opposed the impleadment of the original defendant no. 8 in his suit. We keep all contentions open for all the parties concerned to be canvassed before the Trial Court.

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34. In the result, these appeals succeed and are hereby allowed. The impugned orders dated 12.12.2023 and 12.06.2023 respectively in Review Petition No. 717 of 2023 and Miscellaneous Petition No.5567/2018 respectively passed by the High Court are set aside and that of the Trial Court is restored. Accordingly, the appeals stand allowed in the aforesaid terms.
35. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

**Headnotes prepared by:* Divya Pandey