

Mrs. Anjana Vij Vs. Mr. Krishan Dev and Another

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Court : Delhi

Decided On : Mar-07-2011

Judge : V.K. Jain, J.

Acts : Code of Civil Procedure (CPC) - Order 1 Rule 10; Specific Relief Act - Section 19

Appeal No. : I.A. No.3125/2010 in CS(OS) No. 1564/2008

Appellant : Mrs. Anjana Vij

Respondent : Mr. Krishan Dev and Another

Advocate for Def. : Mr. Pankaj Vivek; Mr. Rajiv Bansal; Ms. R. Veena; Mr. Ajay Paul, Advs.

Advocate for Pet/Ap. : Mr. Brajesh K. Srivastava; Mr. Dinesh Kumar, Advs.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported Yes in Digest?

1. This is a suit for specific performance of the agreement to sell dated 20th April, 2006 and for grant of injunction. The case of the plaintiff is that vide an agreement to sell dated 20 th April, 2006, defendant No.1 agreed to sell plot No.50 measuring

100 sq. meters at Rangapuri, Vasant Kunj, New Delhi to her for a consideration of Rs.3 lakhs and received a sum of Rs.2,90,000/- from him leaving a very small amount of Rs.10,000/- as the balance sale consideration. It is also alleged that the plot, subject matter of the agreement was initially allotted by the DDA to the father of defendant No.1, who died on 18th March, 2006 and defendant No.1, claiming to be the sole successor of his father, entered into the abovementioned agreement with the plaintiff. Since defendant No.1 failed to execute the sale document in favour of the plaintiff, she is seeking specific performance of the agreement and injunction restraining defendant No.1 from selling, transferring or assigning the aforesaid plot to any person.

2. In his written statement, defendant No.1 has alleged that one Sukhbir Singh approached him in March, 2006 and enquired as to whether he had been allotted any plot by the DDA in its rehabilitation programme. When he told him that no plot had been allotted to him, Sukhbir Singh told him that his name figured in the serve list of 1971-72 for allotment of plots and further told him that he could help in getting a plot allotted to him from the DDA. Sukhbir Singh took a sum of Rs.10,000/- from him towards expenses changes. He was then taken by Sukhbir Singh to one Naresh Kumar, who offered loan to him and also offered to purchase his entitlement to the plot at the rate of Rs.90,000/- per sq. meter. It is further alleged by defendant No.1 that he agreed to sell his entitlement to Naresh Kumar whereafter he was taken to the office of Sub- Registrar and his signatures were obtained on various papers. He also claims that the contents of the document were got signed from him but were not explained to him. A sum of Rs.1,00,000/- was deposited by Sukhbir Singh and Naresh Kumar in his account. He was then taken to Syndicate Bank where his signatures were obtained on some papers and some money was given to him, which was taken by Naresh Kumar from him. He has also claimed that Rishal Singh died on 18 th March, 2006 leaving behind his widow Smt. Sarabati, five sons and two daughters and he was not the exclusive owner of plot No.50, Block-A situated at rehabilitate site Nangal Dewat and his entitlement was only 1/8 share in the aforesaid plot. It is also alleged that the allotment of plot No.50 in Block-A was cancelled by the DDA and they were allotted plot No.11 in Block-1, in Village Rangpuri, New Delhi in lieu of the plot acquird in Village Nangal Dewat, which belonged to late Shri Rishal Singh.

3. I.A. No.3125/2010 has been filed by Karambir Singh, Hanumat Singh, Bhim Singh, Rajesh Kumar and Sharbati Devi. Sharbati Devi is the mother of defendant No.1 whereas the other applicants are his brothers. It is alleged in the application that the plaintiff is seeking specific performance of an agreement to sell with respect to a property, which is co-owned by the applicants, defendant No.1 and two other persons namely Shakuntala and Suresh Bala, who are the sisters of defendant No.1. Their case is that since late Rishal Singh died intestate, all of them inherited the aforesaid plot being his Class-I legal heirs.

4. The application has been opposed by the plaintiff, who has denied the co-ownership claimed by the applicants.

5. A perusal of the allotment letter dated 19th June, 2007 issued by the DDA in respect of plot No.50, Block-A, in Village Rangpuri shows that the allotment was made to the legal representatives of Rishal S/o Neki (Julahan) resident of Village and Post Office Nangal Dewat, New Delhi in lieu of the plot acquired in the aforesaid village. A perusal of allotment letter dated 28th July, 2008 issued by the DDA again to the legal heirs of Rishal S/o Neki Julahan shows that plot No.11, Block-B-1 in Village Rangpuri was allotted to them in lieu of the plot No.50, Block A in Village Rangpuri.

6. A perusal of the agreement to sell set up by the plaintiff would show that vide this document defendant No.1 Krishan Dev claimed to be owner in possession of plot No.50 in Block A situated at Vasant Kunj, New Delhi and agreed to sell the aforesaid plot to the plaintiff for a consideration of Rs.3 lakhs.

7. It would thus be seen that no allotment letter had been issued by DDA in respect of Plot No.50 in Block A in Village Rangpuri in Vasant Kunj by 20th April, 2006 when the agreement to sell is alleged to have been executed by defendant No.1 in favour of the plaintiff. More importantly, both the allotments were made by the DDA in favour of all the legal representatives of late Rishal Singh, though they were not named in the allotment letter. Though the case set up in the plaint is that defendant No.1 had claimed to be the sole legal heir of late Rishal Singh, there is no such statement in the agreement to sell, alleged to have been executed by him on 20th April, 2006.

8. It is plaintiff's own case that the allotment was made by the DDA to Shri Rishal Singh though, in fact, it was made to his legal heirs and not to him. It is strange that despite claiming knowledge of allotment in the name of late Rishal Singh and also claiming that defendant No.1 had represented to the plaintiff that he was the sole successor of late Rishal Singh, no statement to this effect was got incorporated by the plaintiff in the agreement to sell alleged to have executed on 20th April, 2006. This is also not the case of the plaintiff that she had tried to verify the particulars of the legal heirs of late Rishal Singh and had come to know that defendant No.1 was his sole legal heir. Since the allotment was made to all the legal heirs of late Rishal Singh and this is not the case of the plaintiff that other legal heirs had relinquished their share in favour of defendant No.1, prima facie, it is difficult to dispute that being only one of the legal heirs, defendant No.1 was not competent to enter into an agreement to sell the aforesaid plot to the plaintiff.

9. As a general principle of law, the plaintiff being dominus litis, it is for him to chose the persons against whom he wants to litigate and ordinarily he cannot be compelled to implead a person against whom he did not seek any relief but, this general rule, as observed by the Supreme Court in *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. and others*, AIR 2010 SC 3109, is subject to the provision of Order 1 Rule 10(2) of the CPC, which provides for impleadment of proper and necessary parties. This provision confers a power on the Court to direct to direct addition of a person, who ought to have been joined as a party to the suit but has not been joined, or a person, whose presence before the Court may be necessary in order to enable it to effectively and completely adjudicate upon and settle the questions involved in the suit as a party to the suit. A person, who ought to have been joined as a party to the suit and in whose absence, no effective decree can be passed by the Court, is a necessary party whereas a person is a proper party though not a necessary party if his presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit even though no relief against him has been claimed in the suit.

10. The impleadment of the applicants has been opposed on the ground that being strangers to the agreement to sell dated 20th April, 2006, they are neither

necessary nor proper parties to the present suit. Reliance in this regard has been placed on the decision of Supreme Court in *Kasturi v. Iyyamperumal and others*, (2005) 6 SCC 733. In that case, the appellant had filed a civil suit against respondent Nos. 2 and 3 for specific performance of contract, entered into between him and respondent Nos. 2 and 3. Respondent Nos. 1 and 4 to 11, who were not parties to the contract and were setting up a claim of independent title and possession over the contracted property filed an application to implead them as defendants. The trial Court allowed them to be added as parties and its decision was upheld by the High Court. Reversing the decision of the High Court, Supreme Court held that stranger to the contract namely respondent Nos. 1 and 4 to 11, who were making claims independent and adverse to the title of respondent Nos. 2 and 3 were neither necessary nor proper parties and, therefore, were not entitled to join as party defendants to the suit for specific performance of contract for sale. The Supreme Court was of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. During the course of the judgment, Supreme Court, inter alia, observed 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 .

13 They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In the case of Anil Kumar Singh v. Shivnath Mishra, (1995) 3 SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

"Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party." (emphasis supplied)

15 .As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed.

Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law.

15 .. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be

observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale."

11. However, in a subsequent decision in *Sumtibai and others v. Paras Finance Co.*, (2007) 10 SCC 82, Supreme Court after considering its earlier decision in *Kasturi* (supra), inter alia, observed as under:-

"9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi v. Iyyamperumal* (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly

distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

14 ..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.

12. In the case of Mumbai International Airport Pvt. Ltd. (supra), Supreme Court, on examination of its earlier decisions in the case of Kasturi (supra) and Sumtibai (supra), felt that there was no conflict between the two decisions since they were dealing with different situations, requiring application of different facets of sub-Rule 2 of Section 10 of Order 1 and this had been made clear by the Court in Sumtibai itself.

13. In Gyanender Prasad Tewari v. Om Prakash and Another (CM (M) No.1873/2006 decided by this Court on 26th November, 2007), respondent No.2 before this court filed a suit for specific performance of an agreement to sell dated 18th June, 1990 with possession of the plot, subject matter of the agreement. It

was alleged in the plaint that defendant had represented to the plaintiff that he was the sole and exclusive owner of the suit property on the basis of registered Will dated 13 th February, 1980 executed by his father bequeathing the suit property in favour of defendant and his elder brother and a relinquishment deed had thereafter been executed by the brother of the defendant in his favour. The original Will and relinquishment deed were delivered by the defendant to the plaintiff, who made part payment of the sale consideration to him. On failure of the defendant to perform his part of the obligation, a suit for specific performance of the agreement was filed. In the written statement filed by him, the defendant claimed that the documents, which formed the basis of the suit, were forged and fabricated documents and he was not the sole and exclusive owner of the suit property. Independent applications under Order 1 Rule 10 of CPC were filed by the defendant and his brother G.P. Tiwari for impleadment of G.P. Tiwari as a defendant on the ground that both of them were joint owners of the suit property. This Court, after taking into consideration the decisions of Supreme Court in *Kasturi (supra)* and *Sumtibai (supra)*, took a view that the ownership of suit property was an issue in the suit and, therefore, the petitioner, who claimed to be co-owner of the suit property, would be affected by the decision in the suit and hence was a necessary party. His impleadment as party to the suit was, accordingly, allowed.

14. In *S.S. Bakshi v. P.M. Mathrani* (I.A. Nos.11116, 11119, 11121 and 11132/99 in Suit Nos. 225, 226, 227 and 228 of 1998 decided on 19th December, 2000), applications under Order 1 Rule 10 of CPC were filed for impleading the applicant Mrs. Sarla Mishra as party to the suit. In that case, M.P. Mathrani, owner of Bungalow No.9, Kautilya Marg, Diplomatic Enclave, New Delhi had entered into five agreements to sell his share in the aforesaid property to the five plaintiffs. On his failure to complete the transaction, five suits for specific performance of those agreements were filed in this Court. The applicant before the Court was one of the sisters of the defendant. Her impleadment was opposed by the plaintiff on the ground that she was a total stranger to the agreement to sell executed by defendant in favour of the plaintiff and, therefore, was neither a necessary nor a proper party to the suit. Rejecting the contention, it was held by this Court that the applicant, being co-owner having undivided share in the house, was entitled to be

impleaded as a party to the suit.

15. The learned counsel for the plaintiff has also relied upon the decision of the Supreme Court in *Bharat Karsondas Thakkar v. Kiran Construction Company*, (2008) 13 SCC 658. In that case the issue before the Supreme Court was as to whether the appellant, who had acquired an independent right in the suit property by way of separate decree but was not a party to the agreement between respondent No.1 and M/s Modern Development Corporation could be added as a party in the suit for specific performance, which respondent No.1 had filed and whether the decree passed in his favour could be assailed by respondent No.1 in his suit for specific performance. The Division Bench of the High Court had allowed the amendment so as to implead the appellant as a party to the suit for specific performance, which respondent No.1 had filed. It had also allowed amendment of the prayer in the plaint so as to include declarations with respect to the decree, which had been passed in another suit and for damages. During the course of the judgment, Supreme Court, relying upon its earlier decision in *Anil Kumar Singh v. Shivnath Mishra*, (1995) 3 SCC 147, held that respondent No.1 was not entitled to be joined as a party to the suit and he could file a separate suit to challenge the consent decree. During the course of the judgment, Supreme Court, *inter alia*, observed as under:-

"28. Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title."

16. The facts and circumstances of this case are altogether different from the facts in the case of *Kasturi* (supra) and *Bharat Karsondas Thakkar* (supra). In neither of

these cases, the applicant seeking impleadment as a party to the suit, claimed to be co-owner of the suit property, along with the vendor. As noted earlier, the plot in question was allotted by DDA to all the legal representatives of late Rishal Singh and not to defendant No.1 alone. No relinquishment deed in favour of defendant No.1 has even been claimed by the plaintiff. There is no averment in the agreement to sell set up by the plaintiff that defendant No.1 was the sole legal heir of late Rishal Singh. Therefore, the fact situation in this case is altogether different and prima facie, it appears that defendant No.1 alone had no legal right to enter into an agreement with respect to the plot, which had been allotted to all the legal heirs of late Rishal Singh. In *Sumtibai (supra)*, which is a decision later than the decision in the case of *Kasturi (supra)* and has taken *Kasturi (supra)* into consideration, Supreme Court was of the view that if a third party shows some semblance of title and interest in the property in dispute, he ought to be impleaded as a party to the suit. In that case, it was found that sale deed vide which the property was purchased was executed in favour of not only Kapoor Chand but also his sons, which indicated that Kapoor Chand had no semblance of title in the property. In the present case also, the allotment by DDA being in favour of all the legal representatives of late Rishal Singh, it is difficult to dispute that all his legal heirs have a share in the plot, subject matter of the agreement to sale dated 20th April, 2006.

17. In *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647, Supreme Court, inter alia, observed as under:-

"there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. "

In Bhavnagar University v. palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, Supreme Court, inter alia, observed as under:-

"It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

In Bharat Petroleum Corporation Ltd. v. N.R. Vairamani, (2004) 8 SCC 579, Supreme Court, inter alia, observed as under:-

"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."

18. Since the fact in the case of Sumtibai (supra) as also in the case of Gyanender Prasad Tewari (supra) and S.S. Bakshi (supra) were identical whereas the facts in the case of Kasturi (supra) and Bharat Karsondas Thakkar (supra) were altogether different, I am of the view that in the facts and circumstances of this case, it would not be appropriate to drive the applicants to another litigation by compelling them to file a fresh suit instead of impleading them as parties to the suit, when the facts and circumstances of the case clearly indicate that defendant No.1 was not the sole owner of the plot, subject matter of the agreement to sell dated 20th April, 2006 and was only one of its several co-owners.

19. For the reasons given in the preceding paragraphs, I.A. No. 3125/2010 is allowed and the plaintiff is directed to file amended memo of parties impleading the applicants as well as Smt. Shakuntala and Smt. Suresh Bala, sisters of defendant No.1 as parties to the suit. The applicants before this Court will be entitled to file written statement within 30 days from the date of filing of the

amended memo of parties. Suit summons along with notice of pending applications, if any, be also issued to Smt. Shakuntala and Smt. Suresh Bala, sisters of defendant No.1, for 27th April, 2011.

20. The application stands disposed of.

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