

(2006) 06 GAU CK 0023
In the Gauhati High Court
Case No : Writ Petition (C) No. 265 of 2005

Indian Oil Corporation Ltd.	Vs	APPELLANT
Amit Roy Choudhury and Others		RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 10 Rule 2, Order 6 Rule 17, Order 6 Rule 18, 151
Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 90

Citation : (2006) 3 GLT 193

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : M. Kar Bhowmik and R.K.P. Singh, for the Appellant; S. Dutta, P. Chakraborty and P.R. Barman, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By making this application under Article 227 of the Constitution of India, the Petitioner, who, as Plaintiff, instituted Title Suit No. 59 of 2003, in the Court of Civil Judge, Senior Division, Court No. 1, West Tripura, Agartala, has sought to get set aside the order, dated 04.06.2005, passed in the said suit, allowing thereby the Respondent No. 9 herein to be added as Defendant No. 9 in the suit.

2. The material facts and various stages leading to the present writ application may, in brief, be set out as follows:

(i) The Petitioner herein instituted Title Suit No. 59 of 2003 aforementioned, his case being, in brief, thus : Late Akshoy Roy Choudhury, predecessor-in-interest of Defendant Nos. 1 to 7, was the sole and absolute owner of the suit land and he also owned a Petrol Pump standing on the suit land, the petrol pump being run under the name and style of "M/s. A.K. Roy Choudhury". After the death of Akshoy Kumar Roy Choudhury, his four sons, namely, Defendant Nos. 1 to 4, his

widow, namely, Defendant No. 5, and daughters, namely, Defendant Nos. 6 and 7, became joint owners of the suit land. By a letter, dated 04.07.1998, Defendant Nos. 1 to 7 expressed their desire to sell the suit land in favour of the Plaintiff. Following some negotiations with the Defendants aforementioned, an agreement was reached between the Defendants aforementioned, on the one hand, and the Plaintiff, on the other, for sale of the suit land, with the structures standing thereon, in consideration of a sum of Rs. 62,70,000/-. While the Plaintiff was ready and willing to perform and discharge its obligation under the said agreement for sale, it, suddenly, received a notice, dated 09.06.2003, from the Defendant Nos. 1 to 7 revoking the said concluded contract for sale. While the Plaintiff continued to persuade the Defendants aforementioned to execute the sale deed in terms of the concluded contract, which the parties concerned had entered into, the Plaintiff came to learn that the Defendants aforementioned were trying to transfer the suit land to someone other than the Plaintiff. In these circumstances, the Plaintiff instituted the suit aforementioned seeking, inter alia, a decree for specific performance of contract, in question, and also sought for an order of perpetual injunction restraining the Defendants aforementioned from transferring and/or alienating the suit land, in any manner, to any one other than the Plaintiff.

(ii) During the pendency of the suit, the Defendant Nos. 1 to 7 sold, on 15.09.2003, the suit land in favour of the Defendant No. 8 by executing three registered sale deeds. The Plaintiff, then, amended its plaint and sought for, besides what it had already sought for, a decree declaring, inter alia, the three registered sale deeds, dated 15.09.2003, executed, in favour of the Defendant No. 8, by the Defendant Nos. 1 to 7, as illegal, void and not binding on the Plaintiff. However, at the stage of hearing of the suit, UCO Bank, Agartala Branch, filed a petition, in the suit, under Order 1 Rule 10(2) read with Section 151 of the CPC seeking to be impleaded as one of the Defendants in the suit, the case of the said Bank (which, now, stands impleaded, in the present writ petition, as Respondent No. 9) being that the Defendant No. 8 had approached the Bank seeking financial help to set up a market complex and restaurant on the suit land, the Bank sanctioned a term loan for Rs. 1,05,00,000/- in favour of the Defendant No. 8. In terms of the agreement reached, the Defendant Nos. 1 to 7 executed, on 15.09.2003, three sale deeds in favour of the Defendant No. 8 in respect of the suit land and following execution of the said sale deed, the Bank disbursed, in terms of the agreement, a sum of Rs. 70,00,000/- for purchase of the suit land for the project, the payment of the said sum of Rs. 70,00,000/- having been made by the Bank, on 29.09.2003, directly to the sellers of the suit land, i.e., Defendant Nos. 1 to 7, the said payment having, however, been made subject to creation of an equitable mortgage of the suit land by the Defendant No. 8, in favour of the Bank, by depositing the relevant title deeds and, following the disbursement of the said amount, the Defendant No. 8 duly signed, on 29.09.2003 itself, necessary papers creating equitable mortgage in respect of the suit land in favour of the Bank by depositing with the Bank the said three title

deeds, which were executed and registered, on 15.09.2003, as mentioned hereinbefore.

(iii) On the petition of the Bank having been filed seeking to be impleaded as a Defendant in the suit, the Plaintiff too filed, in the suit, a petition under Order 6 Rule 17 read with Section 151 of the CPC seeking to amend the plaint by incorporating, inter alia, the factum of the agreement, which the Defendant No. 8 had entered into with the said Bank, the memorandum, dated 29.09.2003, aforementioned, whereby equitable mortgage of the suit land had been made by the Defendant No. 8 in favour of the said Bank in respect of the suit land, which he (i.e., Defendant No. 8) had purchased on 15.09.2003. By making this petition, the Plaintiff also sought for amendment of the plaint by incorporating the relief of declaration, inter alia, that the mortgage/transaction entered into, on 29.09.2003, between the Defendant No. 8 and UCO Bank (i.e. the Respondent No. 9 herein) is void, illegal and inoperative.

(iv) By the impugned order, dated 04.06.2005, the learned trial Court has disposed of both the petitions, namely, the petition for amendment of the plaint, which the Plaintiff had sought for, and also the petition of the said Bank (i.e., Respondent No. 9 herein) whereby the Bank had sought to get impleaded as a Defendant in the suit. By the impugned order, the said Bank (i.e. Respondent No.9 herein) was also allowed to be impleaded as Defendant No. 9 in the suit with liberty to file written statement.

3. It is in the back-drop of the above facts that the Plaintiff has made the present application under Article 227 of the Constitution. However, while not objecting to the amendment, which the learned trial Court, has allowed the Plaintiff to make in terms of the prayer made by the Plaintiff itself, the Plaintiff has, at the same time, challenged the directions given by the learned trial Court to implead the Respondent No. 9 herein as Defendant No. 9 in the suit. It is the validity of this direction, which stands challenged in the present writ petition.

4. I have heard Mr. M. Kar Bhowmik, learned Senior counsel, appearing on behalf of the Plaintiff-Petitioner, and Mr. S. Dutta, learned counsel, appearing for Respondent No. 9. I have also heard Mr. P.R. Barman, learned counsel, appearing for the Respondent Nos. 1 to 7, and Mr. P. Chakraborty, learned counsel, appearing for the Respondent No. 8.

5. Challenging the legality of the impugned order, dated 04.06.2005, Mr. Kar Bhowmik has submitted that the Plaintiffs suit is for specific performance of contract and in this suit, none other than Defendant Nos. 1 to 7, who owned the suit property, and the subsequent purchaser thereof, namely, Defendant No. 8 were necessary party. The Respondent-Bank, according to Mr. Kar Bhowmik, is a stranger to the suit inasmuch as the dispute or controversy, which the Respondent No. 9 has with the Respondent No. 8, is, submits Mr. Kar Bhowmik, outside the scope of the contract for sale of the suit property, which the Defendant Nos. 1 to 7 had entered in, on 26.07.2002, with the Plaintiff. By

allowing the Respondent-Bank to become a party to the suit, the learned trial Court, contends Mr. Kar Bhowmik, has, in fact, impleaded a person, whose presence was not at all necessary for the purpose of effective disposal of the suit. It is also submitted by Mr. Kar Bhowmik that under the provisions of Order 1 Rule 10(2), only that person is a necessary party, whose presence is required for the purpose of resolving the controversy, which the suit has raised, and in whose absence, no effective decree can be passed. In a suit for specific performance of contract for sale, the necessary parties are, contends Mr. Kar Bhowmik, the parties to the contract and none other and if any one, during the existence of such a contract for sale, purchases the property, he too becomes a necessary party and the sale made in favour of such a person may be declared null and void if the purchaser has purchased the property with notice of the contract for sale, which the Plaintiff had with the owners of the suit property. The presence of the Respondent-Bank, insists Mr. Kar Bhowmik, is not at all necessary for the purpose of effective disposal of the suit and, hence, the learned trial Court acted beyond its powers in allowing the Respondent-Bank to be impleaded as a party. Support for his submissions is sought to be derived by Mr. Kar Bhowmik from the decisions in *Kasturi Vs. Iyyamperumal and Others*, , *Vijay Pratap and others Vs. Sambhu Saran Sinha, Anil Kumar Singh Vs. Shivrath Mishra alias Gadasa Guru*, , *J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another*, and *Jamna Das v. Ramautar Pande and Ors.* reported in 31 All. 352 : 2 IC 460.

6. Resisting the submissions made on behalf of the Plaintiff-Petitioner, Mr. S. Dutta, learned Counsel for the Respondent-Bank, has submitted that the Plaintiff-Petitioner's suit was not a suit simplicitor for specific performance of contract for sale inasmuch as the Plaintiff has also sought for decree declaring, inter alia, null, void and inoperative the transaction, which the Respondent-Bank had, on 29.09.2003, with the Respondent No. 8, whereby the Defendant No. 8 has created equitable mortgage of the suit property in favour of the Respondent-Bank. When the equitable mortgage created in favour of the Respondent-Bank was sought to get declared void, null and inoperative, it cannot but be held, in such circumstances, submits Mr. Dutta, that the Respondent-Bank is a necessary party to the suit, for, the interest of the Respondent-Bank would be adversely affected if the equitable mortgage created by memorandum, dated 29.09.2003, aforementioned is declared null, void and inoperative without giving the Respondent-Bank any opportunity of having their say in the matter. What is, in other words, contended by Mr. Dutta, is that in the absence of a person, who is a party to the memorandum, dated 29.09.2003, aforementioned, which is sought to get declared null, void and inoperative, the suit cannot proceed and no effective decree can be passed. It was, therefore, according to Mr. Dutta, within the ambit of the powers of the learned trial Court to make the Respondent-Bank a party to the suit and such an order deserves, pleads Mr. Dutta, no interference in exercise of this Court's powers under Article 227 of the Constitution of India. In support of his submissions, Mr. Dutta refers to, and rely upon, the decisions in *Pishu Vaswani v. Kishan Chand Vaswani* reported in (2005) 3 GLR 230 and *M/s.*

Aliji Monoji and Co. Vs. Lalji Mavji and others,

7. It is trite that if an effective decree cannot be passed in the absence of a particular party against whom a right to obtain some relief in respect of the subject matter involved in a suit exists, such a party shall be regarded as a necessary party. Reference may be made, in this regard, to Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, wherein the Apex Court has, while referring to a decision of Allahabad High Court, laid down as to who can be regarded as a necessary party in a civil suit. The relevant observations of the Apex Court are as follows:

...The majority judgment was delivered by Pathak, J. He enunciated two tests for deciding whether certain person was a necessary party in a proceeding, (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceedings, in question, and (2) that it should not be possible to pass an effective decree in the absence of such a party....

There can be no question that these are the true tests for determining whether a person is a necessary party to certain proceeding...

8. Thus, in Rama Krishna Narain (supra), two tests have been laid down for determining the question as to who can be regarded as a necessary party in a civil suit, the tests being (i) that there must be a right to some relief against such a party in respect of the matter involved in the suit or the proceedings, in question, and (ii) that it should not be possible to pass an effective decree in the absence of such party.

9. Bearing in mind the principle of law, indicated hereinabove, as to who can be regarded as a necessary party to a suit or proceeding, let me, now, turn to the present writ petition. While dealing with the present writ application, what may also be borne in mind is that the practice of the Courts, in India, had not been, until the year 1954, uniform as regards the form of the decree to be granted in a suit for specific performance of contract for sale of immovable property. There were three distinct views on this aspect of law. According to one point of view, the proper form of the decree was to declare the subsequent purchase void as against the Plaintiff and direct conveyance by the vendor alone. As against this view, the second line of thought was that both the vendors and the vendee (i.e., the subsequent purchaser) should jointly execute the sale deed in favour of the Plaintiff. The third view, in the matter, was that the execution of the conveyance was to be by the subsequent purchaser alone. Having taken note of these three distinct view points and the practice prevalent, the Supreme Court, in Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, held that in a suit for specific performance of contract for sale of immovable property, the title to the property validly passes from the vendor and resides in the subsequent purchaser. The sale of an immovable property, which forms the subject-matter of a suit for specific performance of contract for sale, is not void, but only voidable at the option of the person, who had entered into a contract for purchase of the

property (i.e., the Plaintiff in a suit for specific performance of contract), for, the title of such a property no longer rests in the vendor with whom the Plaintiff, in such a suit, had entered into contract for sale, when the vendor has already passed his title to the property by way of sale to the subsequent purchaser. It will be, in such a case, illegal, according to the Supreme Court, in *Durga Prasad (supra)*, to compel such a vendor, who has already passed on his title to a subsequent purchaser, to convey to the Plaintiff the title to the property unless steps are taken to re-vest the title in him either by the cancellation of the subsequent sale or re-conveyance from the subsequent purchaser to the vendor. The Apex Court, therefore, held, in *Durga Prasad (supra)*, that the proper form of a decree, in such a suit, would be to direct specific performance of the contract between the vendor and the Plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title, which resides in the subsequent transferee, to the Plaintiff. The Apex Court, however, made it clear, in *Durga Prasad (supra)*, that the subsequent purchaser need not join in the special covenants that the contract for sale may have between the vendor and the Plaintiff and that the joining of the subsequent transferee to the deed of conveyance is merely to pass on the title of the subsequent purchaser to the Plaintiff.

10. I may also pause here to point out that Mr. Kar Bhowmik, learned Senior counsel, is correct, when he submits that necessary parties to a suit for specific performance of contract for sale of an immovable property are the parties to the contract and none else; and if they are dead, their legal representatives and also the person, who might have purchased the contracted property from the vendor. Mr. Kar Bhowmik is also correct in submitting that a person, who sets up a claim adverse to the title of a vendor, is not a necessary party in such a suit. In short, persons, who are strangers to a contract for sale, are not necessary parties to a suit for specific performance of the contract for sale. Reference made, in this regard, by Mr. Kar Bhowmik, to the decisions in *Kasturi Vs. Iyyamperumal and Others*, and *J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another*, is not misplaced. In *J.J. Lal Pvt. Ltd. (supra)*, there was a suit for eviction of tenant, the suit being between the landlord and the tenant. In such a suit, the sisters of the landlord, who also claimed title to the property, were held to be not necessary parties in the suit, for, the suit was for eviction of the tenant and the agreement of tenancy was between the landlord and the tenant, the sisters of the landlord being strangers to the said agreement of tenancy. The necessary corollary flowing from the decision in *J.J. Lal Pvt. Ltd. (supra)* is that a person, who is not a party to the agreement or the contract, is not a necessary party to a suit, which requires determination of the rights and liabilities of the parties to the contract.

11. Mr. Kar Bhowmik's reliance placed on the Privy Council's decision in *Jamna Das v. Ramautar Pande and Ors.* reported in 31 All. 352 : 2 IC 460, is also not misplaced if one considers the question as to who, in law, is a necessary party in a suit simplicitor for specific performance of contract for sale of immovable

property. In *Jamna Das* (supra), the facts were thus: A mortgaged certain property to B and sub-mortgaged certain other property by the same deed. A subsequently sold the whole of his property to C and left with him the bulk of the sale consideration for redemption of the mortgage and sub-mortgage. B obtained a decree for sale of the mortgaged property, but not of the sub-mortgaged property. The proceeds of the sale of the mortgaged property proving insufficient, the decree-holder applied for a decree u/s 90 of the Transfer of Property Act against C as the personal representative of A. In the face of these facts, the Privy Council held that by retaining in his hands part of the purchase money and, expressly or impliedly, agreeing to pay the amount to B, C did not become personally liable and a decree u/s 90 of Transfer of Property Act could not have been passed against C.

12. Thus, the authorities referred to by Mr. Kar Bhowmik merely show that in a suit for specific performance of contract for sale of immovable property, the necessary parties are only those, who were parties to the contract for sale of the property or their heirs and legal representatives and, if the property is sold, then, subsequent purchaser of the property. Anyone other than these persons, who may claim title or interest on such contracted property, is not a necessary party in such a suit, for, in order to resolve the controversy and determine the rights and obligations flowing from the contract of sale, impleading of a person, who was not a party to the contract or who is not a heir or legal representative of such a party or who has not purchased the property, is not at all necessary. In fact, the persons other than those, who were parties to the contract, their legal representatives and subsequent purchaser are nothing, but strangers to the suit and if such a stranger is impleaded in the suit, the entire colour, complexion, texture and the subject-matter of the Plaintiff's suit may get changed. This apart, in order to resolve the controversy, which the case of a Plaintiff, who claims to have a contract for purchase of an immovable property, since none other than those, who; as indicated hereinbefore, are required to be had as parties to the suit, there is no reason to implead anyone else as a party to such a suit. Under Order X Rule 2, only those are necessary parties, whose presence would be required for the purpose of resolving the controversy and in whose absence, no effective decree can be passed.

13. Turning, now, to the facts of the present case, what is of utmost important to note is that the present one was, initially, a suit simplicitor for specific performance of contract for sale; but with the amendment of the plaint, when the Plaintiff sought for a declaration that the memorandum, dated 29.09.2003, which the Defendant No. 8 had entered into with the Respondent-Bank creating equitable mortgage of the suit property in favour of the Respondent-Bank be declared null, void and inoperative, the suit of the Plaintiff-Petitioner did not remain a suit simplicitor seeking specific performance of contract; rather, it became a suit not only for specific performance of contract, but also a suit for declaration that the memorandum, dated 29.09.2003, aforementioned was null, void and inoperative. A person, such as, the Respondent-Bank, which is a party

to the memorandum, dated 29.09.2003, aforementioned and whose interest is inextricably involved in the suit property by virtue of the memorandum aforementioned, has to be held as a necessary party if it has to be decided by a Court as to whether the memorandum, in question, shall or shall not be declared null, void and/or inoperative and whether the same needs to be cancelled. The correctness, legality and effect of the memorandum, dated 29.09.2003, aforementioned cannot be decided in the absence of the parties to the said memorandum or the mortgage, in question. Hence, in the face of the reliefs, which the Plaintiff has sought for, the question of deciding the suit in the absence of the Respondent-Bank does not arise at all.

14. Realising, perhaps, that the Plaintiff-Petitioner was unable to show that in the context of the facts, as delineated above, the Respondent No. 9 is not a necessary party to the suit, it has been submitted, at the end of the hearing by Mr. Kar Bhowmik, learned senior counsel, that in its amendment petition, the Plaintiff merely sought to incorporate, as a statement of fact, that the transaction entered into between the Defendant No. 8 and the Respondent-Bank creating equitable mortgage be declared null, void and inoperative and that, in this regard, the Plaintiff has not specifically sought for any relief in the suit. While considering this aspect of the submission of Mr. Kar Bhowmik, it needs to be noted that the amendments sought for by the Plaintiff, ran, inter alia, thus:

The Plaintiff states that the UCO Bank, Agartala Branch, Agartala paid the sale price of the suit land directly to the sellers namely Sri Madhab Roy Choudhury, Sri Ashoke Roy Choudhury, Sri Amit Roy Choudhury, Smt. Gargi Roy Choudhury, Smt. Mitra Roy Choudhury and Sri Gopal Roy Choudhury vide pay orders/ Manager's Cheque No./pay order No. 012138 for Rs. 14.00 lakhs dated 20.9.03, No. 012139 for Rs. 14.00 lakhs dated 29.9.03, No. 012140 for Rs. 14.00 lakhs dated 29.9.03, No. 012141 for Rs. 14.00 lakhs dated 29.9.03, No. 012142 for Rs. 4,64,667/- dated 29.9.03, No. 01243 for Rs. 9,33,333/- dated 29.9.03.

The aforesaid payment was made subject to creation of equitable mortgage by the Defendant Sri Swapan Chandra Dey and accordingly the said Defendant Sri Swapan Chandra Dey signed a memo of equitable mortgage on 29.9.03 by depositing the title deeds No. 1 -8234 dated 29.9.03. No. 1-8235 dated 15.9.03 and No. 1-8236 dated 15.9.03. All these facts have been revealed from a petition filed by the UCO Bank, Agartala Branch, Agartala dated 2.2.05 filed before the Ld. Court on 3.2.05. The Bank has also admitted the averments relating to the monitory transactions, creation of mortgage etc. In the context stated above the Ld. Court is required to declare that the purported mortgage/transaction dt. 29.9.03 in between Defendant No. 8 and UCO Bank is void, illegal inoperative.

(Emphasis is supplied)

15. Coupled with the above, the reliefs, which the Plaintiff claimed, at Para 22(e) of its plaint, read thus:

Pass order or Orders granting such relief to which the Plaintiff is entitled to in

accordance with the Law and in equity.

16. Though the declaration that the mortgage/transaction, dated 29.9.2003, between Defendant No. 8 and UCO Bank is void, illegal and inoperative was asked for in the statement of facts made in the plaint, the fact remains that when the declaration, so sought for, is considered, in the light of the reliefs, which the Plaintiff, in its plaint, has sought for, namely, that the learned Court below pass order or orders granting such relief or reliefs to which the Plaintiff is entitled to in accordance with the law and in equity, clearly reflects that if, in the suit, it is found by the learned trial Court that the transaction or transactions entered into between the Defendant No. 8 and the Respondent-Bank were illegal, the Plaintiff would become entitled to declaration of the relief that the purported mortgage/transaction, dated 29.9.2003, between Defendant No. 8 and UCO Bank is void, illegal and inoperative. If the learned trial Court refuses to give such a relief merely on the ground that this relief has not been sought for, in the relief portion of the plaint, but in statement of facts made in the plaint, such an approach by the Court would be nothing, but hyper-technical approach. A plaint must be read as a whole and a Civil Court cannot be so technical that if, in the face of the pleadings in the plaint, a Plaintiff is entitled to a relief, it will decline to give such a relief to the Plaintiff merely on the ground that the relief was sought for not while listing the reliefs in the relief portion of the plaint, but while making statement of facts in the plaint, particularly, when the Plaintiff, as in the present case, has also prayed that the Court grant such relief or reliefs to which the Plaintiff is found entitled to in accordance with law and in equity.

17. It has been lastly submitted by Mr. Kar Bhowmik that though the learned Court below allowed the Plaintiff's prayer for amendment, the Plaintiff has not filed the amended plaint and, hence, the amendment of the plaint has not taken place and until the time the amended plaint is filed, the learned Court below has no jurisdiction to implead the Respondent-Bank as Defendant No. 9 in the suit. While considering this aspect of the submission made on behalf of the Plaintiff-Petitioner, it is necessary to point out that amendment shall not, ordinarily, take effect until the time the amended plaint, as directed by the Court, is filed in terms of the Order 6 Rule 18 of the Code of Civil Procedure. However, in the present case, the prayer of the Plaintiff to make amendments were allowed and when it is not the case of the Plaintiff that the amendments, which it has been allowed to make or incorporate, would not be made by the Plaintiff, it should be too technical for this Court, while sitting in writ jurisdiction under Article 227, to interfere with the directions of the Court to implead the Respondent-Bank as Defendant No. 9 in the suit. A mere error of fact or of law, we must bear in mind, is not amenable to supervisory jurisdiction of the High Court under Article 227 of the Constitution of India unless the error causes manifest injustice. However, erroneous an order may be, if the order is passed in exercise of its jurisdiction by a Civil Court and it causes no manifest injustice, the High Court would not invoke its jurisdiction under Article 227 to interfere with such an order merely as a legal formality. Had it been the case of the Plaintiff-Petitioner that it would totally and

completely abandon its right to amend the plaint in terms of the directions given by the learned Court below, the situation would have, perhaps, been a little different; but when the Petitioner takes the benefits of the fact that the learned trial Court has allowed the Petitioner to amend its plaint, the Petitioner cannot, while enjoying the benefit of the amendment allowed, seek from this Court an order setting aside the direction of the learned trial Court to implead the Respondent-Bank as Defendant No. 9.

18. What crystallizes from the above discussions is that the Plaintiff-Petitioner's suit is no longer a suit simplicitor for specific performance of a contract for sale of immovable property and a suit, having become not only a suit for specific performance of contract, but also for declaration, that the transaction entered into by the Respondent-Bank with the Defendant No. 8 is null, void and inoperative, the Respondent-Bank becomes a necessary party to the suit and in the face of these facts, the direction given by the learned trial Court to implead the Respondent-Bank as Defendant No. 9, in the suit, cannot be interfered with.

19. I may further point out that the reference made by Mr. Dutta to the case of M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, , is not entirely misplaced inasmuch as in Aliji Momonji (supra), the lessee of a property sought for perpetual injunction restraining the Municipal Corporation from demolishing a portion of the building on the ground of making unauthorized construction. The landlord of the flat, which was sought to be demolished, was held to be a pro-party to the suit, for, in the event of demolition of the plot, the landlord's right, title and interest would have been directly affected, though no relief had been sought for against him. In these facts, the trial court's decision to implead the landlord was not interfered with by the High Court nor was the same interfered with by the Supreme Court. Though the case so referred to, and relied upon by, Mr. Dutta is not completely applicable to the case at hand, yet in view of the fact that the Respondent-Bank, in the light of the reliefs claimed by the Plaintiff, is, as indicated hereinabove, a necessary party to the suit, the impugned order directing the Respondent-Bank to be impleaded as Defendant No. 9 in the suit cannot be said to be erroneous, far less without jurisdiction, causing miscarriage of justice.

20. Because of what have been discussed and pointed out above, I find no merit in the present writ petition, the writ petition fails and the same shall accordingly stand dismissed.

21. No order as to costs.