

(2017) 07 RAJ CK 0077
In the Rajasthan High Court
Case No : 12331 of 2016

Rajendra Kumar S/o Sohanlalji Balotiya, & Antr.	APPELLANT
Vs	
Rameshchandra S/o Ruplalji Kakhani, & Ors.	RESPONDENT

Date of Decision : 03-07-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Civil Pro

Citation : (2017) 07 RAJ CK 0077

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Sandeep Saruparia, Sanjeet Purhohit, Rajat Dave

Judgement

1. The question involved in the present writ petition is, "whether in a suit for specific performance filed for the enforcement of an agreement , the persons who had purchased the property or had acquired right, interest and title therein, prior to the disputed agreement, can be impleaded as party Respondents?"

2. The facts in a nutshell, necessary for the determination of the above question are that the petitioners-plaintiffs filed a suit for specific performance for the enforcement of an agreement to sell dated 16.08.2005, allegedly executed in their favour wherein, the defendants No.1 to 4, being legal representatives of Late Shri Roop Lal Kakhani were arrayed as Defendants. It was asserted by the plaintiffs that at the time of execution of the respective agreements to sell, the possession of the plots/land, had been handed over by Shri Roop Lal Kakhani (the vendor) for which a total consideration of Rs.10,00,000/- was paid to him. Plaintiffs further stated that before the said transaction could be completed and registered sale deed could be executed, the vendor passed away on 08.11.2005. It has been averred by the plaintiffs that despite their persuasion, the defendants, being legal representatives of the said vendor, refused to execute the sale deed in their favour, even though the plaintiffs were willing and ready to

perform their part of the contract.

3. In a bid to make the factum of said agreement known to general public, plaintiffs got a notice published in daily newspaper on 17th December 2015, having its circulation in the area informing that they had purchased the land admeasuring 4.68 hectares by way of the agreement to sell dated 16.08.2005 and have obtained possession thereof. After the publication of the said notice, the plaintiffs instituted a suit for specific performance of the said agreement for sale, on 20.12.2015. The defendants No.1 to 4 filed a written statement, inter alia refuting the factum of execution of the agreement to sell dated 16.08.2005 and contended that the agreement in question was forged, for which the defendants legal representatives of Roop Lal Kakhani, cannot be bound. On the basis of the pleadings of rival parties, the Additional District & Sessions Judge No.1, Chittorgarh (hereinafter referred to as "the Trial Court"), framed the following issues:- rudh;kr fnukad 12-04-2006 "VERNACULAR MATTER OMITTED"

4. During the pendency of the above suit, seven persons (respondents No.5 to 11) filed a joint application dated 28.04.2016, under Order I Rule (10) (2) (ii) of the Code of Civil Procedure, 1908 seeking their impleadment therein, contending that said Shri Rooplal Kakhani, the owner of the land had already sold/transferred various parcels of land, out of the disputed land of Aarji No.2028/1, 2028/3, to them. It is noteworthy that out of the seven applicants, except Shanti Lal-the Respondent No.5, all the other applicants had admittedly purchased and acquired interest in the disputed land, by way of different agreements to sell ranging between 1996 and 2003. Shanti Lal-respondent No.5 herein, asserted that a plot admeasuring 30ft X 45 ft, in Aarji No.2028/1 had been purchased by him, vide a registered sale deed dated 16.10.1985 duly executed by said Shri Roop Lal Kakhani; whereupon he has already raised construction. It is also relevant to note that other applicants claiming procurement of right and interest vide agreements to sell, asserted that simultaneous with the entering into the agreement to sell, they were handed over the possession of the respective land. The applicants asserted that they have not only been enjoying the possession of the plots, but have constructed tenements thereupon, having all sorts of facilities, including and electricity and water. The plaintiffs opposed the impleadment application with vehemence and contended that if the original owner Rooplal Kakhani had entered into any agreement, as claimed by the applicants, they should have insisted upon execution of the sale deed and/or they ought to have taken appropriate remedies within the prescribed period of limitation provided for enforcement of the agreement. It was also contended by the plaintiffs that on publication of the public notice on 20.12.2005, with respect to the contentious land, it was required of the applicants to have taken their remedies before the appropriate fora; and that the application for impleadment filed on 28.04.2016 was highly belated and thus barred by the law of limitation. Besides the above objection, it was contended by the plaintiffs that the applicants are strangers to the present suit for specific performance of the agreement to sell dated 16.08.2005. It was argued on behalf of plaintiffs that the

applicants are neither necessary, nor proper party for the disposal of the suit.

5. The aforesaid application dated 28.04.2016, filed under Order I Rule 10 of the Code of Civil Procedure came to be allowed by the learned Trial Court, vide its order dated 28.09.2016, with the following observations:- "VERNACULAR MATTER OMITTED"

6. The present writ petition has been filed by the petitioner-plaintiffs, oppugning the aforesaid order dated 28.09.2016, passed by the Trial Court, permitting impleadment of respondent Nos. 5 to 11.

7. Mr. Sandeep Sarupariya, representing the petitioners, at the outset submitted that the plaintiff is the "dominus litis" or the best judge of his case and is free to decide the persons, against whom he wants to see or prosecute. He further urged that the applicants having their separate contractual rights, independent of the present dispute and can avail their own remedies, if available, under the law, but in any event, they cannot be permitted to indulge in the present lis, which is essentially between the plaintiffs and the defendants for enforcement of their rights, flowing from the agreement to sell dated 16.08.2005.

8. Mr. Saruparia further contended that plaintiffs had got a public notice published in the daily newspaper way back in the month of December 2005, so as to inform the general public about their right and interest, emanating from the agreement dated 16.08.2005. As such, if the applicants were to take their remedies or even participate in the present suit proceedings, the same should have been initiated, at the earliest point of time. In essence, his argument has been that the application under consideration, filed by the applicants on 28.04.2016, in the suit in question, which had been filed way back on 20.12.2015, suffers from inordinate delay and laches. Developing his argument further, he submitted that in the period of eleven years, much water has flown under the bridge and notwithstanding to his stand that the applicants cannot be impleaded, he submitted that the stage at which, the applicants have tried to intrude, was not a stage, at which, the Trial Court should have permitted their intervention. He urged that applicants' impleadment, at the stage, when all the pleadings are complete, would bring the suit proceedings back to square one, resulting in a miscarriage of justice.

9. He invited attention of this Court towards the fact that the applicants got up from their slumber after eleven years and have not whispered even a single word, in their application or in the arguments as to how they came to know about the pendency of the suit in question. He added that their conduct becomes more questionable as the defendants themselves were unaware of the transfer of property to the applicants by way of registered sale deed or otherwise. He went on to argue that the defendants have brought these applicants as stooges to stall or frustrate the suit proceedings; and that the application under consideration was not bonafide.

10. Learned counsel for the petitioner, while inviting attention of the Court

towards the issues framed by the Trial Court, contended that a suit is required to be decided on the basis of the pleadings of the rival parties and in light of the issues framed; and that the applicants who have been impleaded as a party by the Trial Court, cannot in any manner, assist the Court in adjudicating any of the issues, as they are alien to the bipartite agreement between the plaintiffs and Late Shri Rooplal, the vendor.

11. Mr. Saruparia contended that if the applicants have any right, title or interest in the property, they are supposed to file objection under Order XXI Rule 97 to 101 of the Code of Civil Procedure. According to him, that is the only course available to the applicants and they can well lodge their protest and protect their possession, in the execution proceedings, filed by the plaintiffs, if the suit is ultimately decreed against them. Learned counsel for the petitioner relied upon the judgment of Supreme Court in the matter of Kasturi Vs. Iyyamperumal reported in (2005) 6 SCC 733 and judgment of this Court in the matter of Deva Ram Vs. Additional District Judge, Deedwana reported in AIR 2008 (Raj.) 174, to drive home the point that the person having separate agreement to sell or acquired interest in the property, cannot be permitted to be impleaded as a party in a suit for specific performance, filed by a buyer against the vendor.

12. Mr. Sanjeet Purohit assisted by Mr. Rajat Arora, voicing the cause of the respondents firstly submitted that the present writ petition filed under Articles 226/227 of the Constitution of India, invoking supervisory jurisdiction of this Court, is not maintainable, inasmuch as, the Trial Court in valid exercise of its power and discretion has permitted impleadment of respondents as defendants in the suit, which cannot be interfered with, in supervisory jurisdiction of this Court. He argued that the Trial Court has exercised the jurisdiction and discretion vested in it and there is no error of law, warranting interference by this Court.

13. In support of his argument he relied upon a judgment dated 10.09.2015 of this Court rendered in S.B. Civil Writ Petition No.3466/2013 Manohar Lal & Ors Vs. Bhupendra Singh & Ors., wherein this Court deriving support from the celebrated judgment of the Supreme Court in the matter of Shalini Shetty & Anr. Vs. Rajendra Shanker Patil (2010) 8 SCC 329 in which it has been held as under:- " 20. Rule 17 deals with application under Articles 227 and 228. If a comparison is made between Rule 1 of Chapter XVII and Rule 17 of the same Chapter it will be clear that petitions under Article 226 and those under Article 227 are treated differently. Both these Rules are set out one after the other:

"1. (i) Applications for issue of writs, directions, etc. under Article 226 of the Constitution Every application for the issue of a direction, order or writ under Article 226 of the Constitution shall, if the matter in dispute is or has arisen substantially outside Greater Bombay, be heard and disposed of by a Division Bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought, it shall be solemnly affirmed or supported by an affidavit In every such application, the applicant shall state whether he has made any other application to the Supreme Court or

the High Court in respect of the same matter and how that application has been disposed of.

(ii) Applicant to inform Court, if during pendency of an application, the Supreme Court has been approached.-If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the High Court, he shall forthwith bring this fact to the notice of the High Court filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

(iii) Hearing may be adjourned pending decision by Supreme Court. The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter."

"17. (i) Applications under Article 227 and 228 An application invoking the jurisdiction of the High Court under Article 227 of the Constitution or under Article 228 of the Constitution, shall be filed on the Appellate Side of the High Court and be heard and disposed of by a Division bench to be appointed by the Chief Justice. The application shall set out therein the relief sought and the grounds on which it is sought. It shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application is disposed of.

(ii) Application to inform Court, if, during pendency of an application, the Supreme Court is approached.-If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

(iii) Hearing may be adjourned pending decision by Supreme Court The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter.

(iv) Rule 2 to 16 to apply mutatis mutandis Provision of Rules 2 to 16 above shall apply mutatis mutandis to all such applications.

21. The distinction between the two proceedings also came up for consideration before the Bombay High Court and in the case of Jhaman Karamsingh Dadlani vs. Ramanlal Maneklal Kantawala (AIR 1975 Bombay 182) the Bombay High Court held:

"2. This High Court since its establishment in 1862 under the Letters Patent has been exercising original as well as appellate jurisdiction and its functioning is regulated by "the Bombay High Court (Original Side) Rules, 1957" and "Rules of the High Court of Judicature at Bombay, Appellate Side, 1960" (hereinafter referred to respectively as "O. S. Rules" and "A. S. Rules"). Rules also provide for disposal of petitions under Articles 226 and 227 of the Constitution.

Supervisory jurisdiction of the High Court under Article 227 of the Constitution is exclusively vested in a Bench on the Appellate Side and jurisdiction of either of the two wings of this Court under Article 226, however, depends upon whether "the matter in dispute" arises substantially in Greater Bombay or beyond it, the same being exercisable by the original Side in the former case and by the Appellate Side in the latter case. This is not made dependent on the matter being in fact of an original or appellate nature. The contention of the learned Advocate General and Mr. Desai is that the matter in dispute, on averments in the petition, must be said to have arisen at any rate, substantially within the limits of Greater Bombay and the petitioner cannot be permitted to avoid the impact of these Rules and choose his own forum by merely quoting Article 227 of the title and prayer clause of the petition, when it is not attracted or by merely making a pretence of the dispute having arisen beyond Greater Bombay by referring to non-existing facts to attract the Appellate Side jurisdiction under Article 226"

22. In paragraph 4 of Jhaman (supra), the High Court further distinguished the nature of proceeding under Article 226 of the Constitution to which, depending upon the situs of the cause of action, Rule 623 of Bombay High Court original Side Rules will apply. The said rule is set out below:

"623. Every application for the issue of a direction, order or writ under Article 226 of the Constitution other than an application for a writ of Habeas Corpus shall, if the matter in dispute is or has arisen substantially within Greater Bombay, be heard and disposed of by such one of the Judges sitting on the Original Side or any specially constituted Bench as the Chief Justice may appoint. The application shall be by petition setting out therein the relief sought and the grounds on which it is sought. The petition shall be supported by an affidavit. In every such petition the petitioner shall state whether he has made any other application to the Supreme Court or the High Court in respect of the same matter and how that application has been disposed of. The petitioner shall move for a Rule Nisi in open Court.

If the Petitioner makes an application to the Supreme Court in respect of the same matter during the pendency of the petition in the High Court, he shall forthwith bring this fact to the notice of the High Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side. The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter."

14. Laying great emphasis on the aforesaid judgment of Manohar Lal; wherein the Kasturi's judgment of the Supreme Court and judgment of this Court in Deva Ram's case (Supra), relied upon by Mr. Saruparia, have been referred to, discussed and dealt with; Mr. Sanjeet Purohit contended that no interference is permissible in the present case. Notwithstanding his stand that the writ petition is not maintainable, he zealously joined the debate on the question involved in the case and contended that in the basic judgment of Kasturi (Supra) relied upon by the petitioners, the persons seeking impleadment were completely strangers,

whereas in the instant facts, the respondents-applicants cannot be held to be strangers to the lis.

15. Mr. Sanjeet Purohit relied upon the Supreme Court's judgment in the matter of Thomson Press (India) Private Ltd. Vs. Nanak Builders & Investors P. Ltd. & Ors. (2013) 5 SCC 397 and pointed out that in para No.24 of the said judgment, the earlier judgment of Kasturi (Supra) has been dealt with, discussed and explained by the Supreme Court and submitted that Kasturi's case was a case of specific performance of contract for sale, wherein an impleadment application came to be filed for contesting the suit as a party-defendant, by the petitioners, claiming their rights not through or under the vendor, but adverse to the title of the vendor; for which the Supreme Court denied the impleadment of the applicants.

16. Counsel for the respondents cited a judgment of the Apex Court rendered in the case of Sumiti Bai & Ors. State of Karnataka reported in (2007) 10 SCC 82, wherein an application seeking impleadment, filed by a co-owner had been allowed by the Supreme Court, while setting aside the judgments of the Trial Court and the High Court. Reading para Nos. 9 and 14 of the said judgment, Mr. Purohit submitted that if the arguments of Mr. Saruparia were accepted, the applicants will have to wait until a decree is finally passed against the defendants, left with the only option of filing a suit for cancellation of the decree, on the footing that the plaintiffs-petitioners did not have a title of the property in dispute.

17. Dealing with the decision of this Court rendered in Deva Ram's case (Supra), he submitted that Deva Ram's case has been decided in ignorance of the judgment of the Supreme Court rendered in Sumiti Bai and Ors. Vs. State of Karnataka reported in (2007) 10 SCC 82, wherein the impleadment application of co-owners was allowed by the Supreme Court.

18. In the pursuit of his efforts of embedding the order impugned, learned counsel, relied upon judgment of High Court of Karnataka reported in 2016 (2) CCC 152, and gave a different facet to his argument, showing his concern and apprehension that if the applicants' impleadment application is rejected, they would lose their rights even as objectors, as has been held by the Karnataka High Court, in Paragraph Nos.13 & 14 reproduced herein below:- "13. The learned counsel for the petitioner placed reliance on the decision in Silverline Forum Pvt. Ltd., v., Rajiv Trust & another, reported in AIR 1998 SC 1754 to the effect that resistance or obstructions made even by a third party to the execution of decree can be gone into under O.21 Rule 97, Rules 97 to 106 in Order 21 are subsumed under the caption "resistance to delivery of possession to decree-holder or purchaser." A third party to the decree who offers resistance would thus fall within the ambit of R.101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. The court is not obliged to determine a question merely because the resistor raised it. The words "all questions arising between the parties to a proceeding on an

application under R.97" would envelop only such questions as would legally arise for determination between those parties.

14. The learned counsel for the respondents placed reliance on decision in *Ashan Devi & Anr. Vs., Phulwasi Devi & Ors*, (2003 (9) SCALE 783 and in *Sri Venkatarayappa vs., Sri G Muniyappa & others*, reported in ILR 2008 KAR 3553. The facts of the said cases are different from the facts involved in the present case. In those two decisions, the court was concerned with threat of dispossession of the obstructers and knowledge of the decree holder about title of the obstructers and not impleading them in the suit and obtaining a decree. But here is a case where the obstructers made impleading applications which came to be dismissed by the trial court and the impleading applicants did not assail that order and accepted with the same. Further the obstructers who are claiming title based on the individual title deeds and as the petitioner claims that the properties claimed by the obstructers are different and distinct, they are entitled to agitate their rights in respect of their respective sites. Some of the obstructers' rights are resolved in the individual suits filed by them and therefore one more resolution of their dispute in the present execution does not arise."

19. Mr. Purohit also cited the judgment of Madras High Court, reported in AIR 2014 Madras 15, to buttress his submission that a person having prior agreement to sell has a right to be impleaded in a suit for specific performance of the same property.

20. Concluding his arguments Mr. Sanjeet Purohit submitted that the law is now well settled, vide judgment of Supreme Court in *Thomson Press's* case and other authoritative pronouncements that a subsequent purchaser in a suit for specific performance is required to be impleaded as a party. He added with bewilderment and surprise that if the persons having purchased or acquired right, interest and title in the property, after the contentious agreement to sell, has the right to be impleaded as a party, then how the respondents having purchased the property prior to the execution of the disputed agreement can be denied such right? Mr. Purohit emphatically asserted that the position of prior purchasers is on much better footing or at a higher pedestal.

21. Joining the debate in rejoinder, Mr. Saruparia contended that as far as the persons acquiring interest in the property, *pendente lite*, or a subsequent purchaser is concerned, they are precluded to raise objection, as prohibited under order XXI Rule 102 of the Code of Civil Procedure. That is why the Courts have adopted a lenient view, so that such persons may not be rendered remediless. However, when it comes to the persons, having acquired right, interest and title in the property, prior to the execution of agreement to sell for which, the suit proceedings relate, they have been given a right to obstruct, under Order XXI Rule 97 of the Code of Civil Procedure and that is why, they cannot be permitted to plunge in the suit proceedings.

22. Mr. Saruparia contended that if the order impugned is not interfered with and the contesting respondents are permitted to remain on the files of the Trial Court, the suit in question would turn into a suit for title from a simple suit of specific performance.

23. Before dealing with the arguments advanced at the bar by the rival counsels, it would be profitable to sail through various judgments of the Supreme Court, appertain to the issue, some of which have already been relied upon by the rival counsels, as noted above.

24. To churn out the underlying principle and with a view to find answer to the question involved in the present case, the pertinent judgments are being analysed, while their relevant parts and excerpts are italicised. 1. *Kasturi v Iyyamperumal and Ors* (2005) 6 SCC 733

".....6. Let us therefore confine ourselves to the provision of Order 1 Rule 10 sub-rule (2) of CPC which has already been quoted hereinabove. From a bare perusal of sub-rule

(2) of Order 1 Rule 10 of the CPC, we find that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of sub-rule(2) Order 1 Rule 10 of the CPC empowers the Court to add a person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 subrule

(2) of the 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 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.

8. We may look to this problem from another angle.

Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

14. Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos.1 and 4 to 11 are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos.2 and 3. In the case of *Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru*, reported in 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 paragraph 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]....."

25. In this case, the Appellant filed a suit for specific performance against Respondent No. 2 and 3 (vendors) regarding the enforcement of an agreement

to sell entered into between them. The Respondent No. 1 (Iyyamperumal) and Respondent Nos 4 to 11 sought their impleadment as necessary parties by filing application under Order I Rule 10 claiming title and possession of the contracted property.

26. With a view to complete the factual narration and determining the position and status of the parties involved, it would be appropriate to go through the High Court judgment, which has been reported in 2003 (2) Madras Law Weekly. After reading the same, it transpires that Respondent Nos. 4 to 11 were legal heirs of the elder brother of Respondent No. 1 namely Chockanathan.

27. The Supreme Court, after a perusal of the relevant provisions of Specific Relief Act and the Code of Civil Procedure ruled in favour of the Appellant and held that Respondents 1 & 4 to 11 are not necessary parties, reiterating the twin tests regarding impleadment of necessary party, namely; right to some relief against such party in relation to the controversies involved in the proceedings and the inability to pass a decree in the absence of such party. 2. Sumitibai and Ors v Paras Finance Co. and Ors. 2007 10 SCC 82

".....9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi vs. Iyyamperumal and others - (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. In view of the aforesaid decisions we are of the opinion that Kasturi's case (supra) 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....."

28. In this case, a suit was filed by the respondent (purchaser) against Kapoor Chand (vendor) for specific performance of a contract for sale. During the pendency of the suit, Kapoor Chand died and his wife, sons etc.(the Appellants) applied to be brought on record as legal representatives. After they were impleaded, they filed an application under Order XXII Rule 4(2) read with Order I Rule 10 Code of Civil Procedure praying inter alia, that they should be permitted to file additional written statement and also be allowed to take such pleas which are available to them.

29. The court held that in the registered sale deed dated 12.8.1960, the property in dispute was mentioned and the sale was shown in favour of Kapoor Chand and his sons, Narainlal, Devilal and Pukhraj. Hence, the registered sale deed itself showed that the purchaser was not Kapoor Chand alone, but also his sons, being co-owners. Though the court didn't express any final opinion on the question whether they are co-owners or not and left it to be decided in the suit, yet it held that the legal representatives of late Kapoor Chand have a right to take this defence, by way of filing an additional written statement and adduce evidence in the suit. The Supreme Court discussed the Kasturi case and distinguished, rather explained it and held in Para 14 that it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed, third party can never be impleaded as a party. 3. Vidur Impex and Traders Pvt. Ltd. and Ors. vs. Tosh Apartments Pvt. Ltd. and Ors (2012) 8 SCC 384

"..... 30.In Anil Kumar Singh v. Shivnath Mishra (1995) 3 SCC 147, this Court interpreted Order 1 Rule 10(2) in the following manner:

"By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party- defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

32. In Kasturi v. Iyyamperumal (supra), this Court considered the question whether a person who sets up independent title and claims possession of the suit property is entitled to be impleaded as party to a suit for specific performance of contract entered into between the plaintiff and the defendant. In that case, the trial Court allowed the application for impleadment on the ground that respondent Nos.1 and 4 to 11 were claiming title and possession of the contracted property and, therefore, they will be deemed to have direct interest in

the subject matter of the suit. The High Court dismissed the revision filed by the appellant and confirmed the order of the trial Court.

33. While allowing the appeal and setting aside the orders of the trial Court and the High Court, this Court referred to Order 1 Rule 10(2) CPC and observed:

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.

11. As noted herein earlier, 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* made the following observations:

"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 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."

12. The aforesaid decision in *Tasker* was noted with approval in *De Hoghton v. Mone*. Turner, L.J. observed:

"Here again his case is met by *Tasker* in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed." (emphasis supplied).

44. The ratio of the judgment in *Kasturi v. Iyyamperumal* (supra), on which heavy reliance has been placed by the learned senior counsel for the appellants, does not help his clients. In the present case, the agreements for sale and the sale deeds were executed by respondent No.2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in *Surjit Singh v. Harbans Singh* (supra) would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser. Therefore, their presence is neither required to decide the controversy involved in the suit filed by respondent No.1 nor required to pass an effective decree....."

30. In this case the Respondent No. 1 (purchaser) had filed a suit for specific performance of agreement dated 13.9.1988 executed by Respondent No. 2, representatives of Pradeep Kumar Khanna (vendor). Thereafter, Respondent No. 2 entered into a clandestine transaction, with the Appellants for sale of the suit property and executed some agreements for sale, which were followed by registered sale deeds and the Appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were found to be in clear violation of the order of injunction passed by the Delhi High Court, which had restrained Respondent No. 2 from alienating the suit property or creating third party interest. The Appellants and Bhagwati Developers sought impleadment under Order I Rule 10 in the aforementioned suit.

31. Hon'ble Supreme Court held that since the transactions did not confer any right upon the Appellants or Bhagwati Developers, their presence is not at all necessary for adjudication of the question whether Respondent Nos. 1 and 2 had entered into a binding agreement and whether Respondent No. 1 is entitled to a decree of specific performance of the said agreement.

4. Thomson Press (India) Ltd. vs. Nanak Builders and Investors P. Ltd. and Ors. (2013) 5 SCC 397

".....24. In Kasturi's case (supra) a three Judges' Bench of this Court said that in a suit for specific performance of contract for sale an impleadment petition was filed for addition as party defendant on the ground that the petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the petitioner sought to be added as a necessary party in the suit. Rejecting the petition this Court held as under :-

11 "As noted herein earlier, 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 contract for sale. For deciding the question who is a proper party in the 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) English Report 848 made the following observations :

"It is not disputed that, generally, to a bill for specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of this jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such case, 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 in 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."

14. "Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos. 1 and 4 to 11 are not necessary parties effective decree could be passed in their absence as they

had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos. 2 and 3. In the case of *Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru*, 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 paragraph 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:

9. "Since the respondent is not a party to the agreement for 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."

25. In the case of *Vidhur Impex (supra)*, the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 41 is worth to be quoted hereinbelow:

41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.

41.2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

41.5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being

joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6 However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment."

58. With the above additions, I agree with the order proposed by my Esteemed Brother, M.Y. Eqbal, J. that this appeal be allowed and the appellant added as party defendant to the suit in question....."

32. Plaintiff -Respondent No. 1 (purchaser) filed a suit for specific performance on 01.11.1991 against the Defendants Sawhneys (Vendors) for the specific performance of the agreements dated 29.05.1986. Before the institution of the suit for specific performance, when the Plaintiff came to know about the activities of the Sawhneys" to deal with the property, a public notice was published at the instance of the plaintiff in a newspaper. Even after the institution of the suit, the counsel who appeared for the Defendants-Sawhneys" gave an undertaking not to transfer and alienate the suit property. In between 31.01.2001 and 03.04.2001 five sale deeds were executed by Defendants-Sawhneys" in favour of the present Appellant herein M/s Thomson Press India Limited. On the basis of those sale deeds, the Appellant moved an application under Order I Rule 10 Code of Civil Procedure for impleadment as Defendants in a suit for specific performance filed by Respondent No. 1. The Hon"ble Supreme Court held that there can be no hesitation in holding that the Appellant entered into a clandestine transaction with the Defendants-Sawhneys" and got the property transferred in their favour. Hence the Appellant - M/s Thomson Press cannot be held to be a bonafide purchaser, without notice. Hon"ble Supreme Court noticed that the High Court had not gone into the question as to whether, a person having purchased the suit property in violation of the order of injunction, having sufficient notice and knowledge of the agreement, needs to be added as party for passing an effective decree in the suit. Having regard to the facts and circumstances of the case and also to meet the ends of justice, the Court held that the Appellant be added as party- Defendant in the suit. 5. Amit Kumar Shaw and Anr. vs. Farida Khatoon and Anr (2005) 11 SCC 403

".....8. On a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.

9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the

proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.

14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under O 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case....."

34. In this case, the property in question originally belonged to Khetra Mohan Das, which later on came in the hands of Birendra Nath Dey and Smt. Kalyani Dey by way of lease and transfer. There were troubles in between the original owner and Birendra Nath Dey and Smt. Kalyani Dey, as a result of which, the suit in question was filed. One Fakir Mohammad claimed his right, title and interest in respect of the contentious property by way of adverse possession. Ultimately, both the appeals were allowed by a common judgment and decree and the suit was remanded back for rehearing before the trial Court. Being aggrieved by the said decree, Fakir Mohammad filed an appeal, challenging the said judgment of the first appellate Court.

35. Later, by a deed of assignment, Birendra Nath Dey assigned his leasehold interest in the property, in favour of the appellants. Similarly, by a sale deed on 15.12.1995, Kalyani Dey sold and transferred her property in favour of the

appellants. The appellants, thus filed these applications for recording their names in the Municipal records, and for the first time, came to know about the pendency of the above two appeals. The appellants, losing no time, moved applications praying for adding them as a party in connection with those two appeals.

36. The Court held that the presence of the appellants are absolutely essential in order to decide the appeals on merits. The Court observed that doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has discretion to make him a party. But the transferee pendente lite can be added as a proper party, if his interest in the subject matter of the suit is substantial and not just peripheral.

37. Permitting the impleadment, the Supreme Court ruled that a transferee pendente lite, to the extent he has acquired interest from the defendant is vitally interested in the litigation. When the transfer is of the entire rights of the of the defendant, the latter having no more interest in the property, may not properly defend the suit. 6. Baluram v P. Chellathangam AIR 2015 SC 1264

".....12. After due consideration of the rival submissions, we are of the view that the High Court erred in interfering with the order of the trial Court impleading the appellant as a party defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the Trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. Appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent No.1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order I Rule 10(2), CPC enables, the Court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit".1. 4. In the present case, the appellant could not be held to be a stranger being beneficiary of the Trust property. The trial Court was justified in impleading him as a party. The High Court erred in interfering with the order of the trial Court.

15. Accordingly, we allow this appeal, set aside the impugned order of the High Court and restore that of the trial Court dated 10th August, 2010, impleading the appellant as a party defendant in the suit. There will be no order as to costs....."

38. In this case, Respondent No. 1 (the purchaser) filed a suit for specific performance against K. Jagathees and R. Subbaram Babu @ Subbaram (Respondent Nos. 2 and 3 respectively and the vendors). Respondent Nos. 2 & 3, who were acting as trustees of a trust, of which Baluram (the Appellant) was a beneficiary, entered into an agreement with Respondent No. 1 to sell the suit property in his favour but later refused to execute the sale deed unless the beneficiaries of the Trust agreed to it. The Appellant filed an application under

Order I Rule 10 of the Code of Civil Procedure seeking impleadment in the suit for specific performance between Respondent No.1 and Respondent Nos. 2 & 3. The Supreme Court held that under the provisions of the Trusts Act, the Trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed, the appellant cannot thus be treated as a stranger; it may be permissible for the Appellant to file a separate suit, as suggested by Respondent No. 1, but the beneficiary could certainly be held to be a proper party. Supreme Court concluded that there is no valid reason to decline his prayer to be impleaded as a party, and the same would avoid multiplicity of proceedings and that Order I Rule 10(ii) of the Code of Civil Procedure enables the Court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit".

7. *Shaukat Ali v Bhag Chand and Ors.* 2016 (4) CDR 1899 (Raj)

".....12. The plea raised by counsel for the petitioner regarding non-issuance of notice may have substance, however, in view of the fact that the order dated 19.12.2013 passed by a coordinate Bench of this Court (*supra*) has become final, there is very little that the petitioner could have done even if the notice was issued to him as essentially there is no dispute in the facts that the part of the suit property was purchased by the petitioner after the date of agreement to sale, which is the subject matter of the suit in question and, therefore, the petitioner would fall within the category of a subsequent purchaser and would definitely be affected by the present suit in view of the provisions of Section 19(b) of the Specific Relief Act, 1963.

13. In unusual circumstances of the case as noticed herein before, no interference can be made in the order impugned and, therefore, the writ petition filed by the petitioner has no substance, the same is, therefore, dismissed.

39. In this case, the respondent No. 1-plaintiff (purchaser) filed a suit for specific performance of contract dated 07.04.2004. In the written statement of the defendant, it was indicated that the suit property was already transferred before the suit was filed. The plaintiff filed an application under Order I, Rule 10 CPC seeking to implead the subsequent purchasers as party-defendants in the trial court, which was accepted. The petitioner (subsequent purchaser) however contended that the trial court committed an error in accepting the application filed by the plaintiff. It was submitted that no notice of the application under Order I, Rule 10 CPC was issued to the petitioner either at the earlier stage, when the application was dismissed or after the matter was remanded by the High Court and the application has been accepted by the Trial Court by the order impugned. It was emphasized that the application has been accepted, without providing any opportunity of hearing and, therefore, the order impugned deserves to be quashed and set aside.

40. The Court dismissed the petition by holding that in view of the fact that the order dated 19.12.2013 passed by a Coordinate Bench of this Court (*Supra*) has

become final, there is very little that the petitioner could have done, even if the notice was issued to him as essentially there is no dispute in the facts that the part of the suit property was purchased by the petitioner after the date of agreement to sale, which is the subject matter of the suit in question and, therefore, the petitioner would fall within the category of a subsequent purchaser and would definitely be affected by the present suit in view of the provisions of Section 19(b) of the Specific Relief Act, 1963. 8. S.A. Babu Reddy v Munireddy and Ors. 2016 (1) AKR 147

".....12. The court below while passing the impugned order has failed to note that on the same set of facts, the obstructors moved the impleading application and failed in their attempt. They have accepted the said order and therefore they are not entitled to obstruct the decree in the execution petition and seek for rejection of the execution petition. 13. The learned counsel for the petitioner placed reliance on the decision in Silverline Forum Pvt. Ltd., v., Rajiv Trust & another, reported in AIR 1998 SC 1754 to the effect that resistance or obstructions made even by a third party to the execution of decree can be gone into under O.21 Rule 97, Rules 97 to 106 in Order 21 are subsumed under the caption "resistance to delivery of possession to decree-holder or purchaser." A third party to the decree who offers resistance would thus fall within the ambit of R.101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. The court is not obliged to determine a question merely because the resistor raised it. The words "all questions arising between the parties to a proceeding on an application under R.97" would envelop only such questions as would legally arise for determination between those parties. 14. The learned counsel for the respondents placed reliance on decision in Ashan Devi & Anr. Vs., Phulwasi Devi & Ors, (2003 (9) SCALE 783 and in Sri Venkatarayappa vs., Sri G Muniyappa & others, reported in ILR 2008 KAR 3553. The facts of the said cases are different from the facts involved in the present case. In those two decisions, the court was concerned with threat of dispossession of the obstructors and knowledge of the decree holder about title of the obstructors and not impleading them in the suit and obtaining a decree. But here is a case where the obstructors made impleading applications which came to be dismissed by the trial court and the impleading applicants did not assail that order and accepted with the same. Further the obstructors who are claiming title based on the individual title deeds and as the petitioner claims that the properties claimed by the obstructors are different and distinct, they are entitled to agitate their rights in respect of their respective sites. Some of the obstructors' rights are resolved in the individual suits filed by them and therefore one more resolution of their dispute in the present execution does not arise....."

41. In this case, the petitioner (purchaser) filed a suit for specific performance against respondent Nos. 1 to 9 (vendor) seeking directions to them to execute sale deed as per the agreement of sale dated 5.12.1993. During pendency of the suit, the obstructors filed impleadment application on the ground that they have

purchased residential sites formed in the suit schedule lands from the defendants and they are in occupation of the respective sites, as absolute owners, they are the bona fide purchasers for valuable consideration, under respective sale deeds.

42. The Karnataka High Court held that it is seen from the records that the obstructers already filed suits on the basis of sale deeds and obtained decree in their favour, and now the matters are before this Court. Therefore, the obstructers who are basing their title on the basis of individual sale deeds have to protect their rights on the basis of individual title deeds and are not entitled to have a resolution of their dispute in the execution petition filed by the petitioner. The Court below while passing the impugned order has failed to note that on the same set of facts, the obstructers moved the impleadment application and failed in their attempt. They have accepted the said order and therefore they are not entitled to obstruct the decree in the execution petition and pray for rejection of the execution petition. 9. Deva Ram and Ors. v The Addl. District Judge and Ors. AIR 2008 Raj 174

".....6. The learned Trial Court has proceeded to reject the aforesaid three applications together by the impugned common order dated 14.12.2007. The learned Trial Court has observed that the matter relates to agricultural land wherein khatedari rights are allowed under the Rajasthan Tenancy Act and in case of intestate demise of the khatedar, the rights devolve as per personal law; and during the lifetime of the khatedar, his sons and daughters cannot prevent him from alienating the land. The learned Trial Court has further observed that the land in question is in the khatedari of Motaram who received the same from his father; that the plaintiff has alleged the agreement for sale having been executed by Motaram and his sons and has filed the suit for specific performance joining them as parties; and hence, there was no necessity to hear the applicants....."

43. In this case, the suit in question was filed on 01.09.1993 by the plaintiff Omprakash (purchaser) (Respondent No. 2) against the defendants and vendors Motaram (Respondent No. 3 herein), his sons Ramdhan (since deceased and represented by his legal representatives Respondent Nos. 4/1 to 4/10) and Pemaram (Respondent No. 5). The plaintiff Omprakash alleged the defendants Motaram, Ramdhan and Pemaram having entered into an agreement on 02.09.1990 to sell the suit property and later not executing the same. The petitioners before the High Court moved an application under Order I Rule 10 CPC, asserting the land in question to be an ancestral property; and while stating their entitlement thereto, alleged that the litigation in question has a direct bearing on their rights for which their presence would be necessary for effectual and complete determination of the questions involved. The petitioner No. 1 Devaram stated himself to be the son of the daughter of Bheraram (their ancestor and father of Motaram); and the petitioners Nos. 2 to 6 stated themselves being the daughters of Motaram (defendant No. 1). Another application of similar nature for impleadment was filed by the sons of the

defendant No. 3, Pemaram. The Court held that the crux of the matter remains that the suit in question is the one for specific performance of an agreement to sell, alleged to have been entered into by the defendants Motaram, Ramdhan and Pemaram. This Court held that in the factual situation of the case, none else except the plaintiff (the alleged purchaser) and the defendants (the alleged vendors) were the necessary parties to this suit. The application for impleadment as filed by the petitioners, who were not the parties to the agreement in question, was held fundamentally misconceived and was rejected. 10. Mumbai International Airport Pvt. Ltd. v Regency Convention Centre and Hotels Pvt. Ltd. and Ors. AIR 2. 010 SC 3109

".....24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonafides 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 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 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 coowner 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 vendor-defendant 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 coowner 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. 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....."

44. In this case, Chhatrapati Shivaji International Airport, Mumbai was handed over to the appellant for operation, maintenance, development and expansion under an agreement dated 4.4.2006 with AAI. However, a parcel of the land measuring 31,000 sq.m. was not made a part of the lease due to a pending suit

filed by the Respondent No. 1 against AAI in High Court and the said premises could become part of the demised premises subject to the Court verdict. The Appellant filed an application under Order I Rule 10 of the Code of Civil Procedure requesting impleadment in the suit for specific performance between Respondent No.1 and AAI which was rejected by the Court. The Hon''ble Court held that the appellant is neither a necessary nor a proper party. If the interim order in the suit filed by the Respondent No.1 came in the way of granting the lease of the suit land, it is clear that the suit land was not leased to the Appellant. The fact that if AAI succeeded in the suit, the suit land may also be leased to the appellant is not sufficient to hold that the appellant has any right, interest or a semblance of right or interest in the suit property. It was held that the Appellant was neither a purchaser nor the lessee of the suit property and had no right, title or interest therein, to be a party in the suit. 11. Manohar Lal and Ors. v Bhupendra Singh and Ors. 2015 (4) CDR 2127 (Raj)

".....8. Learned counsel appearing for the petitioners submitted that the Court below has found that there could have been possibility of fabricating any document by the petitioners, since the alleged sale agreement is an unregistered document, which is not warranted. Further, the said Amavasai has not filed any suit for specific performance of the contract, hence, the Court below has viewed for the possibility of fabricating the document, which could not be construed as defamatory or pre-conclusion against the petitioners....."

45. In this case, Petitioners filed a civil suit for specific performance of contract and perpetual injunction by arraying the Respondents Nos. 1(vendor) and Respondent No. 2 (holder of power of attorney of first respondent) as defendants. In the suit, it was averred that first respondent has agreed to sell urban land measuring 4928 sq.ft. to them by executing agreement to sell dated 21.08.1992. In the written statement, the first respondent has denied the fact that he has appointed second respondent as his power of attorney holder. During pendency of the suit, the third respondent laid an application under Order I Rule 10 CPC for being impleaded as a party defendant. In his application, the third respondent averred that the land in question is owned by him and, therefore, he is not only proper party but a necessary party to the litigation. With a view to substantiate his assertion, the third respondent also averred in the application that for the same property he has launched a Civil Suit bearing No. 229/1998 for permanent injunction wherein interim injunction has been granted in his favour to protect his possession.

46. The Court held that although the subject matter of the suit was specific performance of the contract, since the petitioners had also claimed the relief of perpetual injunction, as such, on the face of it, when the third respondent had shown his semblance of interest and title on the land in question and further he had proved his possession over the same, it could not be said that the learned Courts below has committed any jurisdictional error in impleading him as party defendant. The Court found that the third respondent has proved his possession

on the strength of suit for perpetual injunction filed by him, wherein interim relief had been granted to him and further more, there was a sale deed in his favour of the said property. After scrutinizing the legal precedents on which rival parties have placed reliance, on the touchstone of the facts of the case, in the suit for specific performance of contract and permanent injunction considering the semblance of title or interest of the third respondent and his possession on the land founded on sale deed, the Court instead of subscribing to the traditional view, found that departure from it was a better course. What is noteworthy here is, that the case of Thompson Press was neither considered nor cited.

47. As a result of the analysis of various judgments cited by the rival counsels and some other judgments, which were deemed germane to the question involved, this Court finds that the position of law is more or less trite that in the suit for specific performance, a person who has acquired right, title and interest in the property, after the contentious agreement to sell for specific performance whereof, the suit has been filed, has a right to become a party.

48. A question thus naturally arises, that if a subsequent purchaser, bonafide or a stranger, having acquired right or interest after the notice of the litigation, has a right to be impleaded as a party, then why a person who has acquired right, title and interest in the subject property, prior to the agreement to sell, for which, the litigation is pending, should be denied such a right?

49. In this regard, the observation of Supreme Court in Sumiti Bai & Ors Vs. Paras Finance Co. & Ors. reported in (2007) 10 SCC 82 particularly Para 14 is of great significance. At the cost of repetition, it would be worthwhile to go through the excerpts from Para No.14 of the said judgment: "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".

50. As far as the judgment of the Supreme Court in Kasturi's case is concerned, on which, much reliance has been placed by the learned counsel for the petitioner, if the facts of the case are minutely examined, it is apparent that the persons seeking impleadment, being respondents Nos.4 to 11 in the said case, were the persons claiming title and possession of the contracted property, indicating that they are the legal heirs of elder brother of the deceased namely Chockanathan and thus entitled to the suit property. Father of the respondent No.1 Thiruvarasan had purchased the contentious property involved in the suit from one Poonusamy Naicker under the sale deed dated 19.03.1955, which sale deed contained five items of property. Out of the said five items, two items were the suit properties in the suit filed before the Trial Court.

51. As the judgment of the Supreme Court in Kasturi's Case reported in 2005 (6) SCC 773 does not clearly indicate as to who were the respondents No.4 to 11, this Court has looked into the judgment of Madras High Court reported in

2003 (2) MLW 547 (Madras High Court). If the judgment of the Supreme Court rendered in Kasturi's case is perused, this Court finds that in Para No.7 of the said judgment, the Hon'ble Supreme Court has clearly carved out that necessary parties in suit for specific performance to an agreement to sell are the parties to the contract i.e. vendor or vendee and if they are dead, (their legal representatives as also persons who had acquired the contracted property from the vendor."

52. In the same vein in Para No.7 itself, the Supreme Court has denied the right to be impleaded as a party to a person who claims adversely to the claim of a vendor.

53. The aforesaid view of the Supreme Court is further fortified from Para No.14 of the said judgment particularly the expression "in our opinion, the respondent Nos.4 to 11 are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into."

54. If the facts of the Kasturi's case are examined, it transpires that the persons being respondent Nos.4 to 11 seeking impleadment claimed themselves to be the owner of the property and as such, the Supreme court denied them the right of audience and rejected their impleadment applications.

55. A careful reading of Kasturi's judgment heavily relied by Mr. Saruparia, on the contrary shows that a person who had purchased the contracted property from the vendor is entitled, to be impleaded as a party, while a person who claims adversely to the claim of a vendor is not a necessary party.

56. Having examined the facts of the present case on the touchstone of the enunciation made by the Supreme Court in Kasturi's case, this Court is prima facie of the opinion that the applicants alleging to have acquired right, title, interest in the property prior to the contentious agreement to sell are entitled to be impleaded as a party. The law laid down in Kasturi's case that "a person who claims adversely to the claim of a vendor is however, not a necessary party" also supports the case of the applicants-respondents inasmuch as they have not claimed adversely or rival to the claim of the vendor.

57. The vendor in the present case is Roop Lal Kakhani, whose legal representatives have been impleaded as defendants No. 1 to 4. The applicants have not asserted their right against the right, title and interest of Roop Lal Kakhani, or challenged his title, but contended that he had transferred some part of the property to them, by way of separate instruments or conveyance. In the peculiar facts of the present case, if the applicants are impleaded as a party, they will not be claiming their right adversely to the claim of the vendor and hence there is a remote possibility of the present suit being transformed into a suit for title, as apprehended by Mr. Saruparia. If their impleadment is not permitted, as argued by the petitioner, it would lead to multiplicity of proceedings, because then in such event, the applicants will have to wait until a decree is passed

against the defendants to take their legal remedies.

58. Now crops up the another ancillary, yet important question, as to "who are the persons having acquired the right, title and interest in the property?" The phrase "right, title and interest" has been used by the Supreme Court and other Courts of law, while deciding the impleadment application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, may it be an application filed by the prior purchaser or the subsequent purchaser, having acquired the right after the date of the subject agreement to sell, which is the subject matter of the suit.

59. In all the above referred cases, the impleadment has been allowed by the Supreme Court, as the applicants were having substantive right in the property either by way of joint ownership or by way of interest or title, as a result their right to succeed. In other words, as discussed in the case analysis, the Supreme Court has permitted impleadment of those persons who have prima facie established or showcased their ownership, title and possession qua the property.

60. The case at hand is quite different, as out of seven applicants, only one, namely Shanti Lal is having right, title and interest in true sense. It is Shanti Lal alone, who is having registered sale deed in his favour, whereas all other applicants have laid their claim on the basis of separate agreements to sell in their favour, executed by said Roop Lal Kakhani during the period ranging from 1990 to 2005 (prior to the contentious agreement). Without observing anything about their individual rights, this Court holds that Shanti Lal respondent No.5 having a registered sale deed or title in his favour, falls within the ambit of phrase "right, title and interest in the property" and has a definite right to be impleaded.

61. The cases/ applications of other applicants cannot be equated with that of Shanti Lal, inasmuch as they are admittedly having only agreement to sell in their favour which too are unregistered. In this regard, it would be relevant to refer to various provisions of Registration Act and Specific Relief Act. Section 50 of the Registration Act is reproduced hereinfra:-

50. Certain registered documents relating to land to take effect against unregistered documents

(1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, subsection (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation : In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

Section 17 (1) (f) and Sections 19 & 20 of the Specific Relief Act are reproduced hereunder:-

"17. Documents of which registration is compulsory

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

"(f) agreement to sell immovable property possession whereof has been or is handed over to the purported purchaser;

19. Relief against parties and persons claiming under them by subsequent title
Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

PROVIDED that the company has accepted the contract and communicated such acceptance to the other party to the contract.

20. Discretion as to decreeing specific performance

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party."

62. A perusal of Section 17 (1) (f) shows that agreement to sell in relation to immovable property, possession whereof has been handed over, requires compulsory registration. It is an admitted fact on record that the agreement to sell in favour of the Applicants-respondents (except respondent No.5 Shanti Lal), have not been registered. After 18.09.1989, every agreement to sell in relation to an immovable property, is required to be registered. As such in absence of registration, the agreements to sell have no legal sanctity or enforceability.

63. Besides this, by virtue of the provisions contained in Section 50 of the Registration Act, the registered document shall take effect against unregistered documents. In view thereof, applicant-respondent No.5 Shanti Lal, who is having registered conveyance in his favour has definitely a better title, than the plaintiffs. As such, he is a necessary party in the suit proceedings. After impleadment, it would be necessary to enquire/probe as to whether, the vendor

late Shri Roop Lal Kakhani having transferred the said land in favour of Shanti Lal, was having capacity or legal title to convey even that parcel of the land to the plaintiffs, by way of agreement to sell dated 16.08.2005.

64. The Supreme Court has dealt with the rights of the parties, in light of Section 19 of the Specific Performance Act, while deciding their impleadment applications. Clause (b) of Section 19 is having important bearing on the issues which deals with the transactions, after the execution of the agreement to sell, for which a suit for specific performance has been instituted.

65. Section 20 of the Specific Relief Act clearly provides that jurisdiction to decree, specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so, while carving out certain exceptions, in which, the Court can exercise its discretionary power not to decree the suit for specific performance, which includes hardship. As such, being guided by the underlying principles of Section 20 of the Specific Relief Act, 1963, the Court may take into account the antecedent factors.

66. As an upshot of the above discussion, this Court holds that respondent No.5 Shanti Lal, having purchased the property by way of registered sale deed is a necessary party whereas, other applicants who are having agreement to sell simplicitor, despite being a proper party cannot be impleaded as defendants, as they have staked their claim on the basis of unregistered agreement to sell and long possession. Their impleadment in the suit proceedings if permitted, would definitely change the nature of the suit and it would become a suit for title, and would stretch way beyond the confines of a suit for specific performance.

67. The impleadment of respondents No.6 to 11 (herein after referred to as "other applicants") would lead to multiplicity of litigation and their arrayal in the suit would make a mess of the suit proceedings, inasmuch as, various issues may sprout, including the validity of their agreements, which are neither registered nor appropriately stamped. These Applicants' impleadment in the suit proceedings would swell the scope of the suit, besides changing its nature.

68. At this juncture, it would be apt to observe that the other applicants (respondent Nos.6 to 11) not being permitted to participate in the suit proceedings by way of the order instant, will have a right to obstruct the execution proceedings on the basis of their right and interest in the property within the frame work of law, including Order XXI Rule 97 of the Code of Civil Procedure, 1908. The applicants cannot be deprived of their rights to object or obstruct the execution proceedings as a result of rejection of their impleadment applications.

69. The writ petition is allowed in part. The impugned order dated 28.09.2016, permitting impleadment of the applicants, except Shanti Lal (respondent No.5) is set aside. Needless to clarify that Shanti Lal shall continue to remain in the arena of defendants and will have all right to contest the suit, including filling the written statement.