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**(1996) 02 CAL CK 0031**  
**In the Calcutta High Court**  
**Case No : Suit No. 284 of 1995**

Sushil Kumar Kajaria

APPELLANT

Vs

Gul Tara Chand Kripalani

RESPONDENT

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**Date of Decision :** 22-02-1996

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)  
Specific Relief Act, 1963 — Section 19

**Citation :** (1996) 1 CALLT 428

**Hon'ble Judges :** Barin Ghosh, J

**Bench :** Single Bench

**Advocate :** A.K. Mitra and Girish Gupta, for the Appellant; P.K. Das, R. Bachawat and Dhruba Ghosh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Barin Ghosh, J.—In the suit the plaintiff, Sushil Kumar Kajaria, seeks a declaration that an agreement for sale as recorded in the corrected Memorandum of Understanding is valid and binding. The plaintiff then seeks specific performance of the said agreement and other consequential reliefs. The plaintiff has contended that it was agreed between the parties that the defendant would sell and the plaintiff would purchase F.A.R. measuring an area of 15,000 sq. ft. approximately as per Calcutta Municipal Corporation Rules of Premises No. 73, Dr. Meghnath Saha Sarani, Calcutta, on the terms and conditions recorded in the subject Memorandum of Understanding corrected by Mr. P. Bhalodia, an advocate attached with M/s Khaitan & Co. a firm of Solicitors, who was engaged by the defendant for finalisation of the said agreement.

2. In this application the plaintiff has sought addition of Rightex Commerce Pvt. Ltd. as a party defendant to the suit. The plaintiff has contended that in an affidavit made by the defendant No. 1 on behalf of the defendants in opposition to the interlocutory application made by the plaintiff, the defendants disclosed that they have entered into an agreement with Rightex Commerce Pvt. Ltd. and

after taking inspection of the original of the said agreement and obtaining a xerox copy thereof, pursuant to the order of this Court, the plaintiff has been advised that for the purpose of determination of the rule questions in controversy between the parties presence of Rightex Commerce Pvt. Ltd. is necessary in order to afford complete relief to the plaintiff.

3. On the pleadings, as contained in the plaint, wherein proposed amendments have been shown, it appears, that the plaintiff has contended that this agreement is dated 7th March, 1995; whereas the agreement of Rightex Commerce Pvt. Ltd. is dated 28th March, 1995.

4. From the decisions cited at Bar and which shall be referred to hereinafter it appears to me that in a suit for specific performance of an agreement the Court is called upon to determine whether the person seeking specific performance is entitled to the same and nothing more and in that view of the matter, presence of a subsequent proposed transferee in such a suit is not at all necessary, inasmuch as such subsequent proposed transferee cannot in any manner held to be interested in the matter of determination whether the previous proposed transferee has discharged his obligations under the agreement, specific performance whereof has been sought for. In *Gosto Behari Sarkar v. Sur's Estate Ltd.* reported in ILR (1946) 1 Cal 656, a learned Single Judge of this Court held that in the matter of deciding an Application for addition of party the enquiry is two fold:-

1. What are the questions involved in the suit?

2. Is the presence of the person sought to be added is necessary in order to enable the Court effectually and completely settle those questions, or any one or more of them? It was then held that the answer that must be given will depend upon the particular facts of the case which will be before the Court both as to the nature of the suit and as to circumstances under which it is alleged that the presence of the person is necessary. The learned Judge consider the provisions of Order 1 Rule 10 (2) and Order 1 Rule 3 of the CPC 1908 and observed at page 658 of the Report: "In this case, it seems to me no right to relief against the applicant is alleged to exists at all "and" it cannot be said that the applicant is a proper party to the suit which has been filed". In that case, a proposed subsequent transferee had applied to be impleaded in a suit instituted by the previous proposed transferee for specific performance of his agreement. In the plaint filed no relief had been sought for against the applicant. The Court held at page 658 of the Report that the applicant is plainly not a person whose presence is necessary within the meaning of the latter part of Order 1 Rule 10(2) since the question involved in the suit are two fold. (1) Was there an agreement between the plaintiff and the defendant to sell as has been alleged in the plaint in question? If there was, has the plaintiff any cause of action? (2) Are there special circumstances from which it follows that damages will not be adequate compensation? It was then held that if those are established, the plaintiff will be entitled to the relief claimed, namely, specific performance. The same was also

the view of another learned Judge of this Court in Mohammadbhai Sk. Mohsinbhoy and Ors. v. Trustees for the improvement of Calcutta and Ors., reported in AIR (1985) Cal 219. In New Redbank Tea Co. Pvt. Ltd. Vs. Kumkum Mittal and Others, the Supreme Court observed that a party who is not directly interested in the issues between the plaintiff and the defendant but is only indirectly or commercially affected cannot be added as a defendant because the Court has no jurisdiction under the relevant Rule to bring him on record even as a proper party. The Supreme Court then referred to one of its earlier decisions where it was observed "in a suit relating to property in order that a person may be added as a party he should have a direct interest as distinguished from a commercial interest in the subject matter of litigation". The Supreme Court then held that the applicant has no interest in the subject matter of dispute in the suit and therefore, cannot be impleaded as a party thereto,. In the aforesaid judgment a subsequent proposed transferee had applied to be added as a party to the suit instituted by the previous proposed transferee for specific performance of his contract.

5. In Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, , the Supreme Court was dealing with a case where one Daulat Singh had entered into an agreement for purchase of an immovable property with one Shivnath Mishra and had instituted a suit for specific performance of the said agreement. Subsequently, the heirs of Daulat Singh, on being substituted, applied for addition of the wife and sons of Shivnath Mishra to the suit by contending that as a result of a collusive decree passed in suit No. 393 of 1990 u/s 220-B of the U.P. Zamindari Abolition and Land Reforms Act, the sons and wife of Shivnath Mishra have become co-sharers of the property which was agreed to be conveyed under the agreement and therefore the sons and the wife of Shivnath Mishra are necessary and proper parties to the suit so instituted by Daulat Singh. The Supreme Court rejected the said contention by holding, inter alia, that the subsequent interest said to have been acquired is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit and that since the persons sought to be added are not party to the agreement it cannot be said that without their presence the dispute as to specific performance cannot be determined and therefore, they are not necessary parties. While holding that they are not necessary parties, the Supreme Court observed that the object of Rule 10(2) is to bring on record all the persons who are parties to the dispute relating to the subject matter. In a suit for specific performance of a contract a non-party to such a contract cannot be said to be a party to the dispute relating to the subject matter. However, while observing that the subsequent interest said to have been acquired by virtue of a decree of Court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit, the Supreme Court did not refer to transfer of title, but referred to acquisition of independent title to the property in question, on which no claim could be made in a suit for specific performance of a contract, to which

the independent title holder is not a party. Any other manner of reading the said judgment of the Supreme Court will render Section 19(b) of the Specific Relief Act, 1963 otiose as the said provision of law specifically provides that specific performance of a contract may be enforced against any other person claiming under one of the parties to the suit by a title arising subsequent to the contract. The said provision of law as well as Section 40 of the Transfer of Property Act, 1882 read with the statutory illustration thereto, however, protects bona fide purchaser without notice. If a contract for sale of an immovable property is entered by a party and subsequent to such contract he sells the property to another but not to the contracting party, then the contracting party can institute a suit against the party to the contract as well as against the subsequent title holder and the form of decree in such a suit should be as has been provided for by the Supreme Court in *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*. If the contracting party is not aware as to who is the transferee of the title to the property at the time of institution of the suit and latter on discovers the name and address of such transferee, will he be deprived of bringing the subsequent title holder on record of the suit as a defendant, the answer to my mind, is in the negative, as I am of the view that the judgments as cited before me and the provision of law on which parties have relied, make it clear that :-

I. In a suit for specific performance the subsequent proposed transferee is not a necessary or proper party nor he is a party to the dispute being the subject matter of the suit, since the claim in the suit cannot be enforced against him, nor he is in any way bound thereby;

II. But in a suit for specific performance if the title to the property stands transferred subsequent to the contract, then, since specific performance can be had against the transferee, as since a suit can be instituted against such transfer to obtain specific performance, the transferee may be added as a party to the suit inasmuch as then it cannot be said that such transferee is not a party to the dispute relating to the subject matter of the suit or that his presence is unnecessary.

6. Applying the aforesaid principle of law. I have to see whether any case of transfer of title has been made out in the amendments sought to be incorporated. It appears from the amendments sought to be incorporated namely, paragraphs 18, 18A, 18B, 18C and 18D that the plaintiff has not contended transfer of title to the property in question but has contended that there is a contract to transfer right.

7. Mr. Mitra appearing on behalf of the plaintiff has submitted that in addition to the pleadings sought to be incorporated by amendments, I should also look at the agreement which has been annexed to the petition. By reading the agreement I do not find that there is any transfer of title to the property in question although the second party to the agreement has been authorised to book flats and to receive earnest money therefore. There is no authority to sell

flats. On the other hand I find that the agreement provides that the second party to the agreement will assist the first party, who are the defendants in this suit, to develop the property, whereupon the net profit will be shared equally between them. The real intent of the agreement is to develop the property in question and not to transfer the title therein. In that view of the matter, there is no question of impleading, Rightex Commerce Pvt. Ltd. as a party defendant to this suit.

8. There is one more prayer in the application which is for an injunction restraining Rightex Commerce Pvt. Ltd. from taking any step or further step in pursuance of the agreement dated 28th March, 1995 and I am told that there is an ad interim order in terms thereof. Since Rightex Commerce Pvt. Ltd. cannot be joined as a party defendant to this suit, there is no question of passing any order restraining Rightex Commerce Pvt. Ltd. from taking steps in pursuance of the agreement dated 28th March, 1995. I, therefore, vacate the said order.

9. In the result the application fails and the same is dismissed with costs assessed at Rs. 10,000.

10. All parties to act on a xerox signed copy of this Judgment on the usual undertaking.