

GURMIT SINGH BHATIA

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v.

KIRAN KANT ROBINSON AND OTHERS

(Civil Appeal Nos. 5522-5523 of 2019)

JULY 17, 2019

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[DR. DHANANJAYA Y. CHANDRACHUD AND

M. R. SHAH, JJ.]

Code of Civil Procedure, 1908 – Or.1, r.10 – Impleadment of party – Respondent nos. 2 & 3-original plaintiffs filed a suit against respondent no.1-original defendant no.1 for specific performance of the agreement to sell/contract – During the pendency of the suit and despite the injunction against the respondent no.1 not to alienate or transfer the suit property, he executed a sale deed in favour of appellant – Pursuant thereto, appellant filed an application u/Or.1 r.10 of the CPC for impleadment as a defendant in the suit – Trial Court directed the original plaintiffs to join the appellant as a defendant in the suit – Writ petition – High Court set aside the order passed by the Trial Court and held that as no relief was claimed against the appellant, he cannot be said to be necessary or formal party – On appeal, held: Considering the principle that plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law – Also, considering the decision of Supreme Court in the case of Kasturi v. Iyyamperumal, the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract against the original defendant no.1 to which the appellant is not a party and that too against the wish of the plaintiffs – No reason to interfere with the judgment of the High Court.

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Dismissing the appeals, the Court

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HELD: Whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him?

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A 1.1 An identical question came to be considered before
this Court in the case of *Kasturi v. Iyyamperumal* and applying
the principle that the plaintiff is the *dominus litis*, in the similar
facts and circumstances of the case, this Court observed and held
that the question of jurisdiction of the court to invoke Order 1
Rule 10 CPC to add a party who is not made a party in the suit by
B the plaintiff shall not arise unless a party proposed to be added
has direct and legal interest in the controversy involved in the
suit. It is further observed and held by this Court that two tests
are to be satisfied for determining the question who is a necessary
party. The tests are – (1) there must be a right to some relief
C 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. It is further observed and held that in a suit for
specific performance the first test can be formulated is, to
D determine whether a party is a necessary party there must be a
right to the same relief against the party claiming to be a
necessary party, relating to the same subject matter involved in
the proceedings for specific performance of contract to sell. It is
further observed and held by this Court that in a suit for specific
E performance of the contract, a proper party is a party whose
presence is necessary to adjudicate the controversy involved in
the suit. It is further observed and held that the parties claiming
an independent title and possession adverse to the title of the
vendor and not on the basis of the contract, are not proper parties
and if such party is impleaded in the suit, the scope of the suit for
F specific performance shall be enlarged to a suit for title and
possession, which is impermissible. It is further observed and
held that a third party or a stranger cannot be added in a suit for
specific performance, merely in order to find out who is in
possession of the contracted property or to avoid multiplicity of
the suits. It is further observed and held by this Court that a
third party or a stranger to a contract cannot be added so as to
G convert a suit of one character into a suit of different character.
[Para 5.2] [600-E-H; 601-A-C]

H 1.2 That thereafter, after observing and holding as above,
this Court further observed that in view of the principle that the
plaintiff who has filed a suit for specific performance of the contract
to sell is the *dominus litis*, he cannot be forced to add parties

against whom, he does not want to fight unless it is a compulsion of the rule of law. In the aforesaid decision in the case of *Kasturi*, it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in a suit for specific performance of the contract to sell the *lis* between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property. It is further observed and held by this Court in the aforesaid decision that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party-defendants in such suit. The aforesaid observations are made by this Court considering the principle that plaintiff is the *dominus litis* and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law. Therefore, considering the decision of this Court in the case of *Kasturi*, the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original defendant no.1 and in a suit for specific performance of the contract to which the appellant is not

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A a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs. [Para 5.2] [603-D-H; 604-A-E]

B *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar* (2018) 15 SCC 614 ; *Shri Swastik Developers v. Saket Kumar Jain* 2014 (2) Mh. L.J 968 – inapplicable.

Kasturi v. Iyyamperumal (2005) 6 SCC 733 : [2005] 3 SCR 864 – relied on.

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Case Law Reference

2014 (2) Mh. L.J 968 held inapplicable Para 3.3

[2005] 3 SCR 864 relied on Para 4.1

(2018) 15 SCC 614 held inapplicable Para 6

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5522-5523 of 2019.

From the Judgment and Order dated 03.07.2013 of the High Court of Chhattisgarh at Bilaspur in W.P. (227)/856/2012 and order dated 05.08.2013 in Review Petition No. 169 of 2013 in W.P. (227)/856/2012.

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Prashanto Chandra Sen, Sr. Adv., P. S. Sudheer, Rishi Maheshwari, Ms. Anne Mathew, Ms. Raj Lakshmi Singh, Kaustab Singh, Ms. Shruti Jose, Advs. for the Appellants.

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M. Shoeb Alam, Ujjwal Singh, Gautam Prabhakar, Mojahid Karim Khan, Kunal Verma, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH , J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 3.7.2013 passed in Writ Petition No. 856/2012 and order dated 5.8.2013 passed in Review Petition No. 169/2013 in Writ Petition No. 856/2012 by the High Court of Chhattisgarh at Bilaspur, by which the High Court has allowed the said writ petition preferred by the original plaintiffs and has quashed and set aside the order passed by the learned trial Court allowing the application preferred by the appellant herein for

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impleading him as a necessary party to the suit filed by respondent nos. 2 & 3 herein – the original plaintiffs, the original applicant – appellant has preferred the present appeals. A

2. The facts of the case leading to these appeals in nutshell are as follows:

Respondent nos. 2 & 3 herein – the original plaintiffs filed a suit against respondent no.1 herein – original defendant no.1 for specific performance of the agreement to sell/contract dated 3.5.2005 executed by respondent no.1 – original defendant no.1 in the Court of learned 4th Additional District Judge, Bilaspur. That during the pendency of the aforesaid suit and despite the injunction against respondent no.1 herein – original defendant no.1 – original owner not to alienate or transfer the suit property, respondent no.1 herein – original defendant no.1 executed a sale deed in favour of the appellant herein vide sale deed dated 10.07.2008. The appellant herein – purchaser who purchased the suit property during the pendency of the suit filed an application in the pending suit under Order 1 Rule 10 of the CPC for impleadment as a defendant in the suit. It was the case on behalf of the appellant herein that he has purchased the suit property and is a necessary and proper party to the suit as he has a direct interest in the suit property. That by an order dated 5.11.2012, the learned trial Court allowed the said application and directed the original plaintiffs to join the appellant as a defendant in the suit. B C D E

2.1 Feeling aggrieved and dissatisfied with the order passed by the learned trial Court dated 5.11.2012 allowing the application and permitting the appellant herein to be joined as a party defendant in the suit filed by the original plaintiffs – respondent nos. 2 & 3 herein, respondent nos. 2 & 3 herein filed writ petition No. 856/2012 before the High Court of Chhattisgarh. By the impugned judgment and order dated 3.7.2013, the High Court has allowed the said writ petition and has quashed and set aside the order passed by the learned trial Court allowing the impleadment application preferred by the appellant herein by holding that as regards the relief claimed against the original defendants and as no relief has been claimed against the appellant herein, the appellant cannot be said to be a necessary or formal party. That thereafter the appellant preferred a review application which came to be dismissed. Hence, the present appeals by way of special leave petitions. F G

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A 3. Shri Prashanto Chandra Sen, learned Senior Advocate has appeared on behalf of the appellant and Shri M. Shoeb Alam, learned Advocate has appeared on behalf of the original plaintiffs.

 3.1 Learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that once the learned trial Court allowed the
B impleadment application submitted by the appellant herein under Order 1 Rule 10 of the CPC holding that the appellant is a necessary and proper party, the High Court, in exercise of powers under Article 227 of the Constitution of India, ought not to have interfered with the same.

 3.2 It is vehemently submitted by the learned Senior Advocate
C appearing on behalf of the appellant that as such the appellant has purchased the suit property from the same vendor and, in fact, the appellant was prior agreement to sell holder and to protect the interest of the appellant the appellant is a necessary and proper party. It is submitted that therefore the learned trial Court rightly allowed the impleadment application submitted by the appellant.
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 3.3 Making the above submissions and relying upon the decision of this Court in the case of *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar*, reported in (2018) 15 SCC 614 and the decision of the Bombay High Court in the case of *Shri Swastik Developers vs. Saket Kumar Jain*, reported in 2014 (2) Mh. L.J 968, it is prayed to
E allow the present appeals and quash and set aside the impugned judgments and orders passed by the High Court and restore the order passed by the learned trial Court.

 4. The present appeals are vehemently opposed by Shri M. Shoeb Alam, learned Advocate appearing on behalf of the original plaintiffs. It
F is vehemently submitted that in fact the appellant purchased the suit property during the pendency of the suit and that too in violation of the injunction granted by the learned trial Court. It is submitted that as such the prior agreement to sell upon which reliance has been placed by the appellant is a concocted and forged one. It is submitted that in any case
G the appellant cannot be impleaded as a defendant in a suit filed by the original plaintiffs for specific performance of the agreement to sell/ contract to which the appellant is not a party. It is submitted that the original plaintiffs are the *dominus litis* and without their consent nobody can be permitted to be impleaded as defendant.

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4.1 It is vehemently submitted that as such the issue involved in the present case is squarely covered against the appellant in view of the decision of this Court in the case of *Kasturi v. Iyyamperumal*, reported in (2005) 6 SCC 733. A

4.2 Insofar as the reliance placed upon the decision of this Court in the case of *Robin Ramjibhai Patel (supra)* as well as the decision of the Bombay High Court in the case of *Shri Swastik Developers (supra)* by the learned Senior Advocate appearing on behalf of the appellant, it is vehemently submitted by Shri M. Shoeb Alam, learned Advocate appearing on behalf of the original plaintiffs that the said decisions shall not be applicable to the facts of the case on hand. It is submitted that in the aforesaid two cases, it was an application by the original plaintiff to implead the subsequent purchaser who purchased the property during the pendency of the suits. It is submitted that as held by this Court in the case of *Kasturi (supra)*, it is for the plaintiff/plaintiffs to implead a particular person/persons as defendant/defendants and if he/they does not/do not join then it will be at the risk of the plaintiff/plaintiffs. It is further submitted that the plaintiff cannot be forced to implead any other person, more particularly who is not a party to the contract, against the wish of the plaintiff. It is submitted that therefore the aforesaid two decisions, upon which reliance has been placed by the learned Senior Advocate appearing on behalf of the appellant, shall not be applicable to the facts of the case on hand. It is submitted that as such the decision of this Court in the case of *Kasturi (supra)* clinches the issue and shall be squarely applicable to the facts of the case on hand. B C D E

4.3 Making the above submissions and relying upon the decision of this Court in the case of *Kasturi (supra)*, it is prayed to dismiss the present appeals. F

5. We have heard the learned counsel for the respective parties at length.

5.1 At the outset, it is required to be noted that the original plaintiffs filed the suit against the original owner – vendor – original defendant no.1 for specific performance of the agreement to sell with respect to suit property dated 3.5.2005. It is an admitted position that so far as agreement to sell dated 3.5.2005 of which the specific performance is sought, the appellant is not a party to the said agreement to sell. It G

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A appears that during the pendency of the aforesaid suit and though there was an injunction against the original owner – vendor restraining him from transferring and alienating the suit property, the vendor executed the sale deed in favour of the appellant by sale deed dated 10.07.2008. After a period of approximately four years, the appellant filed an application before the learned trial Court under Order 1 Rule 10 of the CPC for his impleadment as a defendant. The appellant claimed the right on the basis of the said sale deed as well as the agreement to sell dated 31.3.2003 alleged to have been executed by the original vendor. The said application was opposed by the original plaintiffs. The learned trial Court despite the opposition by the original plaintiffs allowed the said application which has been set aside by the High Court by the impugned judgment and order. Thus, it was an application under Order 1 Rule 10 of the CPC by a third party to the agreement to sell between the original plaintiffs and original defendant no.1 (vendor) and the said application for impleadment is/was opposed by the original plaintiffs. Therefore, the short question which is posed for consideration before this Court is, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him?

5.2 An identical question came to be considered before this Court in the case of *Kasturi (supra)* and applying the principle that the plaintiff is the *dominus litis*, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The 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. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further

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observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character. In paragraphs 15 and 16, this Court observed and held as under:

“15. As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 1 and 4 to 11 before the court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not

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- A permissible in law. In the case of *Vijay Pratap v. Sambhu Saran Sinha* [(1996) 10 SCC 53] this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit.
- B Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of
- C the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against
- D Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not
- E parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for
- F declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.
- G **16.** That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to
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the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.”

That thereafter, after observing and holding as above, this Court further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the *dominus litis*, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law. In the aforesaid decision in the case of *Kasturi(supra)*, it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in

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- A a suit for specific performance of the contract to sell the *lis* between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property. It is further observed and held by this Court in the
- B aforesaid decision that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to
- C join the third parties as party-defendants in such suit. The aforesaid observations are made by this Court considering the principle that plaintiff is the *dominus litis* and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law. Therefore, considering the decision of this Court in the case of *Kasturi*
- D (*supra*), the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original defendant no.1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he
- E does so, in that case, it will be at the risk of the plaintiffs.

6. Now so far as the reliance placed upon the decision of this Court in the case of *Robin Ramjibhai Patel (supra)* and the decision of the Bombay High Court in the case of *Shri Swastik Developers (supra)*, relied upon by the learned Senior Advocate for the appellant is
- F concerned, the aforesaid decisions shall not be applicable to the facts of the case on hand as in both the aforesaid cases, it was the plaintiff who submitted an application to implead the third parties/subsequent purchasers who claimed title under the vendor of the plaintiff. Position will be different when the plaintiff submits an application to implead the
- G subsequent purchaser as a party and when the plaintiff opposes such an application for impleadment. This is the distinguishing feature in the aforesaid two decisions and in the decision of this Court in the case of *Kasturi(supra)*.

7. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the High Court. No
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interference of this Court is called for. The appellant cannot be impleaded as a defendant in the suit for specific performance of the contract between the original plaintiffs and original defendant no.1 against the wish of the plaintiffs. Accordingly, the present appeals stand dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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Ankit Gyan

Appeals dismissed.