

**IN THE HIGH COURT OF BOMBAY, AT GOA**

**WRIT PETITION NO. 370 OF 2023**

FRANCIS CRUZ REP. BY ATTORNEY

LEENAT NANDKISHORE PRASAD

...PETITIONER

Versus

LYNDON PEREIRA AND 3 ORS

...RESPONDENTS

....

Mr. J.J. Mulgaonkar a/w Ms. Deeksha Sharma, Advocate for the  
Petitioner.

Mr. C.A. Coutinho, Advocate for the Respondents.

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**CORAM : PRAKASH D. NAIK, J.**

**RESERVED ON : 10<sup>th</sup> AUGUST, 2023**

**PRONOUNCED ON : 10<sup>th</sup> JANUARY, 2024**

**JUDGMENT :**

1. The Petitioner invokes Article 227 of Constitution of India challenging Order dated 6<sup>th</sup> August, 2022 passed by the learned Civil Judge Junior Division, Margaon-Goa allowing the application preferred by Respondent Nos. 2 to 4 to implead them in R.C.S. No.44 of 2018 pending before the Court of Civil Judge Junior Division at Margaon.

2. The Petitioner filed a suit on 23<sup>rd</sup> February, 2018 before the Court of learned Civil Judge Junior Division, South Goa viz. R.C.S. No.44/2018/F seeking directions to Defendant No.1 to receive the balance consideration and execute registered Sale Deed

with respect to suit property Flat No.F-1, Ambaji Fatorda, Margaon with other reliefs concerning the said property.

3. The Defendant No.1/Respondent No.1 filed a written statement on 26<sup>th</sup> October, 2018 contending that the Sale Deed of suit premises remained unexecuted on account of family dispute between the plaintiff, his father and brother and also on account of non-payment of part consideration amount. The Defendant was always ready and willing to execute the Sale Deed provided the plaintiff and his family resolve the dispute between them and pay to the Defendant outstanding dues. The plaintiff and his family have failed to pay to the Defendant the balance amount and non-payment of outstanding dues renders the agreement for Sale dated 2<sup>nd</sup> May, 2008 as terminated and unenforceable in terms of the said Agreement.

4. The Respondent Nos.2 to 4 preferred an application on 25<sup>th</sup> September, 2018 to implead them in the civil suit. It is the case of Respondent Nos.2 to 4 that they have paid consideration with respect to the suit flat under the Agreement for sale dated 2<sup>nd</sup> May, 2008 and that possession of suit flat is handed over to them and they are necessary party to the suit proceedings.

5. The plaintiff/Petitioner filed objection for intervention application. The Respondent Nos.2 to 4 filed their reply to the objections filed by plaintiff/Petitioner.

6. The learned Civil Judge allowed the application Exh.D-12 and permitted intervention of Respondent Nos. 2 to 4.

7. Learned Civil Judge while allowing the application has observed that the intervention parties are residing in the suit flat. There is dispute between plaintiff and the intervening parties as regards the payment made towards purchase of the suit flat. Both the parties have produced on record documents in support of their contentions. In order to ascertain the genuineness and veracity of the information and the documents involved in the case, the presence of intervening parties as Defendants would be necessary. Their presence is essential for effective decision of controversy with a view to avoid further litigation between the parties.

8. Learned Advocate Mr. Mulgaonkar for Petitioner submitted as follows :

- i. The Petitioner had approached Respondent No.1 to purchase the suit flat. The total consideration was Rs.14,10,000/-. Agreement dated 2<sup>nd</sup> May, 2008 was executed between

plaintiff and Respondent No.1. The Agreement is registered in the office of Sub-Registrar at of Salcete.

- ii. The Petitioner was in employment abroad and hence he constituted and appointed his father (Respondent No.2) as his attorney vide power of attorney executed before notary. The Agreement was executed by Petitioner through his power of attorney holder i.e. Respondent No.2.
- iii. The Petitioner paid a substantial amount of consideration amounting of Rs.12,78,000/- and in terms of stipulations contained in the agreement for sale dated 2<sup>nd</sup> May, 2008, the Defendant No.1 had agreed to handover possession of the suit flat within a period of 24 months. The Defendant No.1 on the pretext that he will soon get the completion certificate, failed to execute Sale Deed in favour of Petitioner.
- iv. All payments towards the purchase of the flat were made by Petitioner through is earnings and by drawing cheques in the name of Respondent No.1. The cheques were given to Respondent No.2 to be handed over to Respondent No.1. For receipt of same cheques, the Respondent No.1 issued receipts in the name of Petitioner's family members/attorney.

- v. The Petitioner issued public notice in a local daily newspaper and revoked the power of attorney dated 14<sup>th</sup> March, 2007 issued in favour of his father and mother i.e. Respondent Nos.2 and 3.
- vi. The Petitioner requested Defendant No.1 to execute Sale Deed. The Defendant No.1 failed to execute Sale Deed in favour of Petitioner for 8 years.
- vii. The Petitioner issued a legal notice on 16<sup>th</sup> February, 2017 calling upon Respondent No.1 to receive the balance amount and execute Sale Deed in favour of Petitioner. The Respondent No.1 replied vide his letter dated 4<sup>th</sup> May, 2017 refusing to execute a Sale Deed in favour of Petitioner with a reason that Petitioner has defaulted in payment.
- viii. The Petitioner sent a cheque dated 28<sup>th</sup> April, 2017 for an amount of Rs.2,65,000/- to Respondent No.1. However, the cheque was not encashed by Respondent No.1.
- ix. The Respondent Nos.2 to 4 do not hold any contract of specific performance which can be enforced and as such the Petitioner has not claimed any relief against Respondent Nos. 2 to 4 nor has pleaded anything adverse against them.

- x. The presence of Respondent Nos.2 to 4 is not required in the suit. All the amount towards consideration of the suit flat have been paid through cheques by Petitioner. The Respondent Nos. 2 to 4 is collusion and connivance with Respondent No.1 have got various receipts issued in their name.
- xi. In order to decide the real controversy involved in the suit, only the agreement for sale dated 2<sup>nd</sup> May, 2008 has to be considered and nothing else.
- xii. The impugned Order is in violation of provisions of law and amounts to jurisdictional error. The proposed parties have no privity of contract with the Petitioner. The scope of the suit is limited to seeking specific performance of sale agreement. Major part of consideration is received by Respondent No.1 from the Petitioner.
- xiii. The learned Judge erroneously exercised his jurisdiction of impleading parties to a suit under Order I, Rule 10 of C.P.C. contrary to the principle of *dominus litus*.
- xiv. The trial Judge was never called upon to decide genuineness or veracity of documents on record but to examine the fact

that even on assumption that the documents were genuine, the intervenors relied on receipts which contained cheque details and the Petitioner's account statements established that the cheques were drawn by Petitioner from his account and only the receipts for the same were issued in the name of the Respondents.

- xv. The application preferred by Respondent Nos. 2 to 4 does not establish the relation of proposed parties to the subject matter of the suit.
- xvi. The suit was filed for specific performance of agreement for sale dated 2<sup>nd</sup> May, 2008 and Respondent Nos. 2 to 4 are not parties to the said agreement. Hence they are not necessary parties to decide the actual controversy involved in the suit.
- xvii. The Respondent No.1 in collusion with Respondent Nos. 2 to 4 have set out the purported 'family dispute' to take an advantage to escape from the stipulations contained in the agreement dated 2<sup>nd</sup> May, 2008 for its due and specific performance so as to disentitle the Petitioner to avail the remedy of specific performance of agreement dated 2<sup>nd</sup> May, 2008.

- xviii. The trial Court failed to consider that the suit is for specific performance of the contract and substantial amount of consideration has been received by Respondent No.1.
- xix. The Respondent No.1 is liable to perform his part of stipulations as agreed in terms of agreement dated 2<sup>nd</sup> May, 2008. the Respondent Nos.2 to 4 are not required to be impleaded as they are not parties to the agreement.
- xx. The Respondent Nos. 2 to 4 are claiming title and possession in respect of the suit flat. The remedy for the same does not lie in the present suit.
- xxi. The Petitioner was abroad due to his employment and executed power of attorney to enter into the agreement dated 2<sup>nd</sup> May, 2008 on his behalf.
- xxii. The terms and stipulations of the agreement are binding on Petitioner and Respondent No.1. Upon receipt of consideration, the Respondent No.1 is bound to execute a Sale Deed in favour of the Petitioner.
- xxiii. The learned Judge ought to have considered that suit is for specific performance of contract. The Respondent Nos. 2 to 4 intend to alter the nature of the suit and added a fresh cause



of action which is not relevant to the facts of the case and the controversy involved in the suit.

xxiv. The impugned Order is bad in law and deserves to be set aside.

9. Mr. Mulgaonkar has relied upon the following decisions :

*i. Mumbai International Airport Private Limited V/s. Regency Convention Centre And Hotels Private Limited And Others<sup>1</sup>*

*ii. Gurmit Singh Bhatia V/s. Kiran Kant Robinson And Others<sup>2</sup>*

*iii. Kasturi V/s. Iyyamperumal And Others<sup>3</sup>*

10. Learned Advocate Mr. C.A. Coutinho appearing for Respondent Nos.2 and 4 submitted that there is no infirmity in the impugned Order. The Respondent Nos. 2 to 4 are necessary parties. Multiplicity of the proceedings could be avoided. The Respondent Nos.2 and 4 are in possession of suit flat. They are occupying the suit flat. The amount towards consideration was paid by them to Respondent No.1. There are receipts issued by Respondent No.1 in their favour. The learned Civil Judge has considered the legal and

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<sup>1</sup> (2010) 7 SCC 417

<sup>2</sup> 2019 LawSuit(SC) 1369

<sup>3</sup> (2005) 6 SCC 733

factual aspects of the matter and passed the impugned order which does not call for any interference. The Respondent Nos.2 and 3 are parents of Petitioner. The Respondent No.4 is son of Respondent Nos. 2 and 3. The agreement for sale dated 2<sup>nd</sup> May, 2008 was in the name of intervening parties nos. 1 and 2. It was inadvertently signed by them on behalf of the plaintiff as power of attorney. The intervening parties paid a total sum of Rs.14,28,000/- to Defendant No.1. The intervening party no.3 also contributed the money to the extent of Rs.1,50,000/-. The amount of Rs.1,50,000/- paid by cheque dated 24<sup>th</sup> May, 2011 to Defendant No.1. The amount of Rs.2,85,000/- dated 2<sup>nd</sup> May, 2008 and Rs.2,95,000/- by cheque No.21097 were paid to Respondent No.1. The amount of Rs.1,48,000/- and Rs.2,90,000/- were paid by cheque. Thus, the total amount of Rs.10,18,000/- was paid by intervening party nos. 1 and 2 to Defendant. The intervening parties paid total sum of Rs.14,28,000/-. Cash of Rs.6,00,000/- was given to the plaintiff. The intervening parties trusted the plaintiff. The trial Court has merely allowed intervention of Respondent Nos.2 to 4. The Respondent No.1 did not oppose the intervention of Respondent Nos. 2 to 4.

11. Mr. Coutinho has relied upon the following decisions :

*i. Sumtibai And Others V/s. Paras Finance Co.Regd. Partnership Firm Beawer (Raj.) Through Mankanwar (Smt) W/o Parasmal Chordia (Dead) And Others<sup>4</sup>*

*ii. Kamlesh Gupta V/s. Mangat Rai and Ors.<sup>5</sup>*

*iii. Shalini Shyam Shetty And Another V/s. Rajendra Shankar Patil<sup>6</sup>*

12. The Petitioner is the original plaintiff. The Respondent No.1 is the original Defendant. The Respondent Nos.2 to 4 are the intervenors in the suit.

13. The general power of attorney was executed by the Petitioner to appoint, nominate and constitute his father (Respondent No.2), mother (Respondent No.3) as lawful attorneys for him to perform the acts, deeds, matters and things mentioned therein. The power includes purchase of plots/properties/flats or any other movable or immovable properties, to appear and act for him before Sub-Registrar and to sign any deeds, agreements, execution, documents, papers for the purpose of registration. To sign execute, enter into, acknowledge and do all such deeds, instruments and things as attorneys in relation to any movable or immovable properties. Agreement for sale was executed on 2<sup>nd</sup>

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<sup>4</sup> (2007) 10 SCC 82

<sup>5</sup> Civil Appeal No.7556 of 2019 dated 23<sup>rd</sup> September, 2019

<sup>6</sup> (2010) 8 SCC 329

May, 2008 with Respondent No.1 by the Petitioner through his power of attorney (Respondent No.2) for purchasing Flat No.F-1 situated at Green Field Apartment for consideration of Rs.14,10,000/-.

14. The Petitioner issued public notice in local news paper and revoked the power of attorney dated 14<sup>th</sup> March, 2007 issued in favour of Respondent Nos.2 and 3.

15. The Petitioner filed a suit viz. R.C.S. No.44 of 2018 before the learned Civil Judge Junior Division for specific performance of contract. The Respondent No.1 was impleaded as Defendant. The Petitioner claimed that he made the payment of Rs.12,78,000/- to Respondent No.1 as per the agreement of sale and the remaining amount was to be paid at the time of completion of building and execution of Sale Deed by Defendant. It was also pleaded that the Petitioner has sent a cheque of Rs.2,65,000/- towards the remaining amount to Respondent No.1. Though the cheque was received by Respondent No.1 he did not encash the same.

16. The Petitioner/plaintiff sought the following reliefs in the suit :

*“a. The defendant may be directed to receive the balance consideration and to execute the registered of Sale Deed with respect to the suit property Flat No.F-1, Ambaji Fatroda, Margaon, Taluka – Salcetet, District : South Goa, State: Goa, on the first floor of the multi-storied building measuring super build-up area of **97.29 Square Meters**, over **Chalta No.38 of P.T. Sheet No.5**, which is measuring **417 Square Meters**, situated at **Chandra wadda**, Margao City, South Goa, Goa. The suit property accompanied with one car parking area of **14.20 Square Meters**, as P-3 along with undivided Share into the land, as described in the plaint para No.1, in favour of the plaintiff.*

*b. In case the defendant failed to execute the Sale Deed, a court commissioner may be appointed to execute the Deed of Sale with respect to the suit property referred above in favour of the plaintiff.*

*c. The defendant may be directed to confirm the existing possession by way of executing the Sale Deed of the said suit property.*

*d. Alternatively, if the Hon'ble Court comes to the conclusion the decree for specific performance of contract cannot be granted for any technical reasons, then the defendants be directed to refund the earnest amount of Rs.12,78,000/- along with interest thereon with 18% p.a.*

*e. The damages equal to the total consideration amount be awarded.”*

17. The Respondent Nos.2 to 4 filed an application for impleading them in the suit on 25<sup>th</sup> September, 2018. The Respondent No.1 filed a written statement dated 26<sup>th</sup> October, 2018 in the suit. The Respondent Nos. 2 to 4 claimed that the intervening party no.3 contributed the money to the extent of Rs.1,50,000/- which was paid to Defendant. The intervening parties also claimed to have made payment of Rs.2,85,000/- by cheque dated 2<sup>nd</sup> May, 2008 and Rs.2,95,000/- by cheque dated 19<sup>th</sup> November, 2008, Rs.1,48,000/- by cheque dated 11<sup>th</sup> February, 2009 and Rs.2,90,000/- by cheque dated 10<sup>th</sup> August, 2009. The amount of Rs.10,18,000/- was paid by Respondent Nos.2 and 3 and Rs.1,50,000/- was paid by Respondent No.4. The intervenors also claim that they paid an amount of Rs.1,00,000/- by cheque dated 25<sup>th</sup> June, 2013 and Rs.1,50,000/- by cheque dated 4<sup>th</sup> July, 2018 and thus the intervenors have paid Rs.14,28,000/-.

18. The Petitioner/Plaintiff filed objection for the intervention application.

19. The Respondent No.1 filed a written statement and contended that part consideration was received from the plaintiff

and partly from account of his brother. The Sale Deed could not be executed on account of family dispute between the parties. Respondent No.1 is always ready and willing to execute the Sale Deed provided the plaintiff and his family resolve the dispute between them.

20. The application preferred by the Respondent Nos. 2 to 4 was allowed by the trial Court vide Order dated 6<sup>th</sup> July, 2019. The said Order was challenged before this Court by preferring Writ Petition No.96 of 2022 on the ground that the Order proceeds on the basis that the impleadment is subject to condition that only issues relating to the grant of specific performance of the contract will be gone into the suit. The impleadment is subject to the condition that only issues relating to grant of specific performance of the contract will be gone into the suit. This Court vide Order dated 4<sup>th</sup> April, 2022 observed that the scope of the suit cannot be curtailed in this manner that to an application for impleadment and the order cannot sustain. The Order further mentions that both the parties agree that the Petition may be disposed off and the impugned Order may be set aside and the matter be remanded to the trial Court to be considered a fresh on merits and after hearing both the sides. The Order dated 6<sup>th</sup> July, 2019 was set aside. The

trial Court was directed to consider the application a fresh and decided on merits after hearing both the parties uninfluenced by the disposal of the Petition.

21. Vide impugned Order dated 6<sup>th</sup> August, 2022 the learned Civil Judge allowed the application for impleadment preferred by Respondent Nos. 2 to 4. It was observed that the intervening party nos. 1 and 2 are residing in the flat. There is dispute regarding payment towards purchase of the suit. In order to ascertain the genuineness and veracity of the information and the documents involved in the case, the presence of intervening parties would be necessary. Their presence is essential for effective decision of the controversy with a view to avoid further litigation between the parties.

22. The Petitioner has relied upon the bank statement to substantiate his claim that the substantial amount towards the consideration was paid to Respondent No.1 by him. It is pertinent to note that power of attorney was executed in favour of Respondent Nos. 2 and 3 for the acts and deeds mention therein. Agreement for purchase of flat was entered by utilizing the power of attorney on behalf of the Petitioner. The agreement for sale dated 2<sup>nd</sup> May, 2008 indicate that it was executed between the



Petitioner and Respondent No.1. The title clause of the agreement clearly stipulates that the agreement is executed between Respondent No.1 who is the builder as a party of the first part and the Petitioner as a party of second part. The Petitioner was represented through power of attorney by Respondent No.2. Flat was purchased by the Petitioner. Although, there is lapse of long period the Respondent No.1 had not executed and registered the Sale Deed. The Petitioner had forwarded the balance consideration by cheque which was not encashed by Respondent No.1. Suit is filed for specific performance. The relief sought in the suit can be granted only in favour of the Petitioner. The intervenors cannot expand the scope of the suit by seeking any further reliefs. The suit is for specific performance of the agreement which was executed between the Petitioner and Respondent No.1. The question is whether any relief can be granted to Respondent Nos.2 to 4. The Petitioner has relied upon several documents to indicate that the amount towards consideration was paid by him. The Respondent nos.2 to 4 also claim to have paid consideration towards purchase of flat. The Respondent Nos. 2 to 4 if had any grievance against the Petitioner, remedies under law can be resorted to by them.

23. The Petitioner filed his reply opposing the proposed

impleadment. The Petitioner contended that presence of Respondent Nos. 2 to 4 is not at all required in the suit. That all the amounts towards consideration of the suit flat have been paid through cheques by the Petitioner and the Respondent Nos.2 to 4 in collusion and connivance with the Respondent No.1 have got various receipts issued in their name. It is the case of the Petitioner that the Respondent Nos. 2 to 4 do not hold any contract of specific performance which can be enforced and as such , the Petitioner have neither claimed any reliefs against the Respondent Nos.2 to 4. It is further the case of the Petitioner that in order to decide the real controversy involved in the present suit, only the agreement for sale dated 2<sup>nd</sup> May, 2008 has to be considered and nothing else and as such the application for intervention needs to be dismissed.

24. The proposed parties have no privity of contract with the Petitioner and the scope of the Petitioner's suit is limited to seeking specific performance of sale agreement, major part of the consideration of which has already been received by the Respondent no.1 (builder) from the Petitioner and therefore there is no question of the proposed parties getting themselves impleaded in the suit.

25. The learned Trial Judge has erroneously exercised his jurisdiction of impleading parties to a suit under Order I Rule 10 of the C.P.C. contrary to the principle of *dominus litus* which has been upheld by the various judgments of the Hon'ble High Court as well as Supreme Court and which makes it entirely plaintiff's prerogative to decide which parties the suit should proceed against.

26. The suit as filed by the Plaintiff is for specific performance of the Agreement for Sale dated 2<sup>nd</sup> May, 2008 and the Respondent Nos.2 to 4 are not parties to the said Agreement, hence they are not necessary parties to decide the actual controversy involved in the suit. The suit is for specific performance of the contract and that a substantial amount of consideration has been received by the Respondent No.1 and the Respondent No.1 in terms is liable to perform his part of the stipulations as agreed in terms of the Agreement dated 2<sup>nd</sup> May, 2008 and that Respondent Nos.2 to 4 are not at all required to be impleaded as they are not parties to the Agreement dated 2<sup>nd</sup> May, 2008.

27. In the case of *Mumbai International Airport Private Limited (supra)*, it is held that Order I, Rule 10(2) is an exception

to general rule in regard to impleadment of parties that plaintiff may choose defendants and he cannot be compelled to sue a person against whom he seeks no relief. Discretion of Court to add a person as party, is limited to persons found to be necessary party or proper party. Such discretion is judicial discretion and has to be exercised according to reason and fair play and not according to whims and caprice. Merely likelihood of a third party to secure a right/interest in suit property in case of dismissal of specific performance suit does not make such party a necessary or proper party to that suit. Mere expectation as to or likelihood of conveyance of title, however well-founded does not create any interest in the property.

28. In the case of *Gurmit Singh Bhatia (supra)*, the question which was posed before the Court is whether the plaintiff can be compelled to implead a person in the suit of specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him. It was observed that the two tests to be satisfied for determining the question who is necessary party is there must be a right to some relief against such party in respect of controversies involved in the proceedings and effective decree can be passed in the absence of such party. 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. 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. 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. 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. 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. Plain reading of the expression used in sub-rule(2) Order I Rule 10 C.P.C. "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 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 and the defendants *inter se* or questions between the parties to the suit and a third party. 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 on one hand and Respondents on the other. This addition, if allowed, would lead to 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. The decree of a suit for specific performance of the contract for sale, if passed cannot affect the right, title and interest of Respondents in respect of contracted property. 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.

29. In the case *Kasturi (supra)*, It was held by the Supreme Court that the question of jurisdiction of the Court to invoke Order I Rule 10 of C.P.C. 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 directed and legal interest in the controversy involved in

the suit. A person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will affect him legally. A bare reading of Order I Rule 10(2) of C.P.C. would clearly shows that the necessary parties in a suit for specific performance of 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.

30. In the case of *Sumtibai And Others (supra)*, it is held that if a party can show a fair semblance of title or interest he can file an application for impleadment. In the case of *Kamlesh Gupta (supra)*, it is observed that by virtue of actual possession being enjoyed by the intervenor, he is a necessary party to the suit. Even otherwise, he is a proper party. The decision was delivered in the facts of this case. The factual matrix of the said decision indicate that the plaintiff filed an application to implead the third person as Defendant and add paragraph in the plaint to the effect that the third person was father of second Defendant had colluded with the Defendants to obtain possession of the suit shop. In the case of *Shalini Shyam Shetty And Another (supra)*, it was held that in exercising his jurisdiction, High Court must follow the regime of

law and improper and a frequent exercise a power under Article 227 of Constitution of India will be countered productive and will divest the extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle.

31. The factual matrix of the present case indicate that the agreement for sale was executed between the Petitioner and Respondent No.1. The suit is filed for specific performance of the contract in the light of the said agreement. The Respondent Nos. 2 to 4 are not party to the agreement. The Respondent Nos.2 and 3 were given power of attorney. The agreement was executed on behalf of the Petitioner by power of attorney. The relief sought in the suit cannot be granted in favour of the Respondent Nos. 2 to 4. The Respondent No.1 has allegedly not executed Sale Deed for 8 years. Although the balance consideration is forwarded to him by cheque, he has not encashed the same. Apparently, the Respondent No.1 is delaying the execution of Sale Deed under the garb of fact that there is family dispute between the parties and they should resolve the same as otherwise he is ready to execute the Sale Deed. There is no privity of contract between the Respondent No.1 and Respondent Nos.2 to 4. The specific performance can be granted in



the event the Petitioner succeeds in the suit in his favour and not in favour of Respondent Nos. 2 to 4. If the Respondent Nos. 2 to 4 have any grievance against the Petitioner or claiming any right in respect of the suit property the same cannot be agitated in the present suit. The Petitioner cannot be forced to add any prayers in the suit or add the Respondent Nos. 2 to 4 as Defendants in a suit for specific performance as the Petitioner is *dominus litus* in the suit. This is not exceptional case to compel the Petitioner to join Respondent nos.2 to 4 as necessary parties. Hence, the impugned Order is required to be set aside.

### **ORDER**

- i. Writ Petition No.370 of 2023 is allowed;
- ii. The impugned Order dated 6<sup>th</sup> August, 2022 passed by learned Civil Judge Junior Division, Margaon-Goa in R.C.S. No.44 of 2018 is set aside.
- iii. The Application for impleadment preferred by Respondent Nos.2 to 4 stands rejected.
- iv. The trial Court shall proceed with the suit and decide the same in accordance with law without being influenced by the observation made in this Order.
- v. Petition stands disposed off.

**(PRAKASH D. NAIK, J.)**

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA  
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