

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No.19 of 2022**

Shyama Devi W/o Ram Kishan Agrawal, aged about 62 years, R/o Mahamaya Road, Ambikapur, District Surguja (CG) Through Power of attorney holder : Ram Kishan Agrawal S/o Late Chiranji Lal Agrawal, aged about 65 years, R/o Mahamaya Road, Ambikapur, District Surguja (CG)

---- Petitioner/Plaintiff**Versus**

1. Bharat Ram S/o Bhausa, aged about 55 years, R/o Krantiprakashpur, Tahsil Ambikapur, District Surguja (CG)

---- Respondent No.1/Defendant No.1

2. State of Chhattisgarh Through: Collector, Ambikapur, Surguja (CG)

---- Respondent No.2/Defendant No.2

3. Amarnath Gupta S/o. Late Sita Ram, aged about 45 years, R/o New Transport Nagar, Pachphedi, Tahsil Ambikapur, District Surguja (CG)

---- Respondent No.3/Defendant No.3

For Petitioner	:	Mr.Anurag Singh, Advocate
For Respondent No.1	:	Mr.Rahul Mishra, Advocate
For Respondent No.2	:	Ms Pushplata Khalkho, Panel Lawyer
For Respondent No.3	:	Ms Priyanka Mehta, Advocate

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

22.11.2022

- By way of this writ petition, the petitioner/plaintiff has challenged the order dated 27.11.2021 passed by the 5th Civil Judge Class-II, Ambikapur, District Surguja in Civil Suit No.49A/2019, whereby the application filed by respondent No.3 herein under Order 1 Rule 10 of the Code of Civil Procedure for impleadment as defendant has been allowed.
- Brief facts of the case are that the petitioner / plaintiff filed a suit on 11.3.2019 on the following reliefs:-

“(अ) यह कि अम्बिकापुर से दरिया जानें वाली रोड के पश्चिम में स्थित भूमि खसरा नंबर [127/1](#) में दरिया रोड के पश्चात् उसकी सीमा से पश्चिम में लगी भूमि जिसका उल्लेख इस वाद पत्र की कंडिका क्रमांक—3



में है, का स्वामी को घोषित कर पश्चिम की ओर की भूमि दरिमा रोड घोषित किया जाए।

(ब) यह कि वाद भूमि के किसी अंश अथवा दरिमा रोड पर प्रतिवादी क्रमांक-1 को बल पूर्वक कब्जा प्राप्त करने, वादी का मार्ग संबंधित सुखाधिकार बाधित करने से स्थायी निषेधाज्ञा के द्वारा निषेधित किया जावे।

(स) xxx xxx xxx

(द) xxx xxx xxx”

It has been further pleaded that defendant No.1/respondent No.1 was owner of the land bearing Khasra Nos.127/6 & 128/12 total 0.036 hectare and the land bearing Khasra No.127/1 has been acquired for Ambikapur-Darima Road. Defendant No.1 has already sold the entire land and some of his land is already vested in Ambikapur-Darima Road. So, no land was left over with defendant No.1 with respect of Khasra No.127/1. However, respondent No.1 / defendant No.1 entered into agreement to sale of the land bearing Khasra No.127/1 area 0.20 hectare with respondent No.3 on 10.7.2018. In such a suit, respondent No.3 has filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleadment as party defendant No.3, which was allowed by the impugned order. Such an order is illegal, erroneous and contrary to the settled principles of law.

3. Mr.Anurag Singh, learned counsel for the petitioner / plaintiff, would submit that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. He would rely upon the judgment of the Supreme Court in the matter of Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels



Private Limited and others¹. He would also rely upon the judgment passed by coordinate Bench of this Court in the matter of M.A. Wasim v. M.A. Fahim and others². Therefore, he prays to allow the instant writ petition and quash the impugned order.

4. On the other hand, Ms Priyanka Mehta, learned counsel for respondent No.3/defendant No.3, would submit that in Khasra No.127/1, total land is 29 decimals and out of which, respondent No.1 has sold 4 decimal of land to Radhakishan Jain in 1993 and in turn, who sold 2 decimal of land to the plaintiff/petitioner in the year 1996 and 9 decimal of land has been sold to three different purchasers and thereafter in such khasra number, 16 decimal of land is still in possession of defendant No.1 and out of which, he has made registered agreement to sale in favour of respondent No.3 on 10.7.2018 prior to filing of the present suit. She would further submit that the plaintiff has drafted the present suit in such a manner that she does not seek declaration for her own land which has been purchased and thereby depriving the interest of the proposed purchaser. So, the proposed purchaser has rightly been made party defendant by the learned trial Court. She would rely upon the judgment of the Supreme Court in the matter of Sumtibai and others v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) through Mankanwar (Smt) W/o Parasmal Chordia (Dead) and others³ and submit that there is no hard and fast rule or absolute proposition that third party can never be entered into a suit and each case depends on its own facts. She contended that if the party is able to sustain that there is slight semblance of title or interest, then he / she can be considered to be necessary party

1 (2010) 7 SCC 417

2 2016 SCC OnLine Chh 1565

3 (2007) 10 SCC 82



and request for such party for impleadment should be allowed. Therefore, the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties and perused the documents placed on record.

6. In the matter of Vidur Impex and Traders Private Limited v. Tosh Apartment Private Limited⁴ the Supreme Court has considered its earlier decisions on the point and laid down the principles governing disposal of an application for impleadment as under:-

“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.”

7. The principle of law laid down by the Supreme Court in Vidur Impex and Traders Private Limited (supra) has been followed with approval by this Court in M.A.Wasim (supra).

8. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (Abdul Kayoom v. CIT⁵, AIR p 688, para 19)

'19....Each case depends on its own facts and a close similarity between one case and another is not enough because *even a single significant detail may alter the entire aspect*, the deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

(emphasis supplied)

9. In Sumtibai (supra), the Supreme Court has categorically distinguished the case of Kasturi v. Iyyamperumal⁶ and held that 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. It was further observed that 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

5 AIR 1962 SC 680

6 (2005) 6 SCC 733



that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

10. In Surya Dev Rai v. Ram Chander Rai⁷, it has been categorically held by the Supreme Court that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

11. Considering the relief sought for by respondent No.3, learned trial Court has exercised its jurisdiction and allowed the application for impleadment to the proposed buyer as defendant No.3. I do not find any illegality or infirmity in the impugned order warranting interference by this

⁷ (2003) 6 SCC 675



Court under Article 227 of the Constitution of India.

12. Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed. No cost(s).

Sd/-

(Deepak Kumar Tiwari)
Judge

B/-

