



2025:DHC:7318-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 06.08.2025***Judgment pronounced on: 26.08.2025***

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FAO(OS) (COMM) 199/2024, CM APPL. 51461/2024 & CM APPL. 48082/2025

MARYAM BEE

.....Appellant

Through: Mr. Jai Sahai Endlaw and Ms. Sagarika Kaul, Advs.

versus

SHUIBHAM JAIN AND ORS

.....Respondents

Through: Mr. Hemant Kumar and Mr. Venkatesh Joshi, Advs. for R-1 to R-3.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. Through this Appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] read with Section 10 of the Delhi High Court Act, 1966 [hereinafter referred to as "DHC Act"], the Appellant assails the correctness of the Order dated 07.05.2024 passed by the learned Single Judge in I.A. No. 23592/2023 in C.S. (Comm) No. 590/2023 titled ***Shuibham Jain and Ors. vs. Maryam Bee***, wherein the application, under Order I, Rule 10 of the CPC, 1908, filed by Respondent No.4, was allowed and he was impleaded in the underlying suit as a party and arrayed as Defendant No.2.



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FACTUAL MATRIX

2. The brief facts leading to the present Appeal are that Respondent Nos.1 to 3 (Plaintiffs before the Court of first instance) filed a suit seeking, *inter alia*, specific performance of an Agreement to Sell dated 27.12.2022 [hereinafter referred to as “ATS”], allegedly executed between the Appellant and Respondent Nos. 1 to 3, for the sale of the property admeasuring 82.5 Sq. Yards, bearing Municipal No. 1806 (Mezzanine Floor to Second Floor with roof rights), Ward No. 4, Chandni Chowk, Dariba Kalan, New Delhi, 110006 [hereinafter referred to as “suit property”].

3. It is the case of the Original Plaintiffs that the Appellant and Respondent Nos. 1 to 3 entered into the ATS for sale of suit property for a total consideration of Rs.7,00,00,000/- (Rupees Seven Crores Only); however, despite having made partial payment, the Appellant has failed to have the sale deed executed in their favour, which compelled Respondent Nos. 1 to 3 to file a suit against the Appellant. The Appellant contended that the total sale consideration was Rs. 9,00,00,000/- (Rupees Nine Crores Only), as another ATS of Rs. 2,00,00,000/- (Rupees Two Crores Only) was executed on 27.12.2022, but since Respondents 1 to 3 failed to pay, the Appellant could not execute the sale deed.

4. Pending the suit, the Applicant/Respondent No.4 filed an application, being I.A. 23592/2023, under Order I Rule 10 of the CPC, seeking to be impleaded as a party to the said suit while claiming to be a co-owner in the suit property.



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5. Respondent No.4 is the brother-in-law of the Appellant. The Appellant has claimed to be the owner of the suit property on the strength of two Gift Deeds executed on 23.08.1981 by Late Smt. Zubeda Khatoon and Late Sh. Sheikh Abdul Sattar Sahib (mother-in-law and father-in-law of the Appellant, respectively), whereas the Applicant/Respondent No.4 claims that he is a co-sharer of the suit property to the extent of 50% along with his brother Abdul Malik (husband of the Appellant).

6. The learned Single Judge of this Court allowed the said application, observing that the proposed applicant/Respondent No.4 herein would have some interest in the said property, and any order passed without Respondent No.4's presence could also lead to further multiplicity and conflicting rulings. Being aggrieved by this portion of the Impugned Order, the Appellant has filed the present Appeal.

CONTENTIONS OF THE PARTIES

7. Learned counsel for the Appellant has advanced the following submissions:

7.1 A third party or stranger to the Contract cannot be added in a suit for specific performance merely to avoid multiplicity of suits.

7.2 Impleadment of the Respondent No.4 as a party to the suit for specific performance of an ATS enlarges the scope of the suit and converts it into a suit for title and possession, which is impermissible in law.



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7.3 Respondent Nos. 1 to 3, being *dominus litis*, have opposed the application for impleadment and supported the claim of the Appellant being the sole and absolute owner of the suit property in the present Appeal.

8. *Per Contra*, the learned counsel for Respondent No.4, while vehemently opposing the Appeal, has contended that:

8.1 The Impugned Order is not appealable under Order XLIII, Rule 1 of CPC. Further, Section 10 of the DHC Act, cannot be invoked, in view of Section 13(2) of the Commercial Courts Act, 2015 [hereinafter referred to as 'CCA']. Reliance has been placed on ***Kandla Export Corpn. v. OCI Corpn.*¹**, ***M.V. Polaris Galaxy v. Banque Cantonale De Geneve*²**, ***Trex India Pvt. Ltd. vs. CDE Asia Limited*³**, and ***Alka Traders v. Cosco India Ltd.*⁴**

8.2 Impleadment in a suit for specific performance depends on the particular facts and circumstances of each case, and it cannot be laid down as a rigid rule that no one can ever be impleaded in such suits. Reliance has been placed on ***Sumtibai vs. Paras Finance Co.*⁵** and ***Rajesh Kumar Arora & Ors. vs. Smt. Shila & Ors.*⁶**

8.3 The Impugned Order dated 07.05.2024 against Respondent Nos.1 to 3/Plaintiffs has attained finality to the extent of impleadment, as they had only challenged the direction concerning deposit in

¹ (2018) 14 SCC 715

² (2024) 5 SCC 750

³ 2023 SCC OnLine Del 2388

⁴ 2020 SCC OnLine Del 3694

⁵ (2007) 10 SCC 82

⁶ 2016 SCC OnLine Del 1277



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FAO(OS)(COMM.) 167/2024 against the Order impugned herein, which was dismissed on 06.08.2024.

ANALYSIS

9. This Court has heard the learned counsels representing the parties at length and, with their able assistance, has perused the documents produced thereof in support of their submissions.

10. At the outset, the learned counsel representing Respondent No.4 raised the preliminary objection with respect to the maintainability of the present Appeal before this Court, contending that the same, being beyond the purview of Order XLIII, Rule 1 of the CPC, is not maintainable under Section 13 of the CCA and therefore, liable to be dismissed. We shall now examine the issues considered in the judgments relied upon by the learned counsel for the Appellant.

11. In ***Kandla Export*** (*supra*), the issue raised by the Supreme Court was whether an appeal, not maintainable under Section 50 of the Arbitration and Conciliation Act, 1996, is nonetheless maintainable under Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. The Supreme Court held that no appeal is maintainable in arbitration matters governed by the 1996 Act, other than appeals provided under Section 50 or 37 of the Arbitration and Conciliation Act, 1996.

12. Learned counsel has further relied on the Judgment of ***M.V. Polaris Galaxy*** (*supra*). The question before the Supreme Court was whether an appeal lies to the Commercial Appellate Division of the



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High Court from an order of the Commercial Division (Single Bench) of the same High Court for the addition of a party in *an admiralty suit governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017*. In ***Trex India Private Limited*** (*supra*), dismissal of an application under Order VII, Rules 10 and 11 of the CPC in a suit for the grant of a permanent injunction was held not appealable under Order XLIII Rule 1 of the CPC and Section 13 of the CCA. Further, in ***Alka Traders*** (*supra*), the Court considered the maintainability of an appeal against the Order of the Commercial Court dismissing an application under Order IX Rule 7 of the CPC.

13. It is evident that none of the aforementioned judgments have any application to the facts of or issue for consideration in the present case and are, therefore, distinguishable. The question arising for determination in the present Appeal pertains to the impleadment of a third party in a suit for specific performance, and the principles laid down in the cited judgements are not applicable to these proceedings.

14. In this regard, a reference may be made to the Judgment of the Co-ordinate Bench in ***Gurmauj Saran Baluja vs. Mrs. Joyce C. Salim & Ors.***⁷, wherein the Order allowing the party to be impleaded as a Defendant was declared a '*Judgment*' within the meaning of Section 10(1) of the DHC Act. The relevant portion of the judgment is extracted hereinbelow for easy reference:

“9. Only the intervener Kaka Singh has appeared to oppose the present appeal. He has raised a preliminary objection that the appeal is not maintainable under S. 10 of the Delhi High Court Act 1966. Sub-s. (1) of S. 10 which is relevant provides that where a single Judge of the High Court of Delhi exercises ordinary original civil

⁷ 1988 SCC OnLine Del 295



jurisdiction, an appeal shall lie from the judgement of the single Judge to a Division Court of that High Court. The question that arises for consideration is if the impugned order is a 'judgment' so as to be appealable. No advantage can be drawn from the provisions of Order 43 of the Code, which provides for appeals from various orders, an order under Order 1, Rule 10 of the Code not being one of the appealable orders. It has now been authoritatively held by the Supreme Court that as far as S. 10 of the Delhi High Court Act 1966 is concerned, Order 43 of the Code is not exhaustive. Though appeals from Orders mentioned in Order 43 would be maintainable, the reverse is not true. In *Shah Babulal Khimji v. Jayaben D. Kania* ((1981) 4 SCC 8 : AIR 1981 SC 1786) (1), the Supreme Court was examining the scope, ambit and meaning of the word 'Judgment' appearing in clause 15 of the Letters Patent of the Bombay High Court and the corresponding clauses in the Letters Patent of other High Courts. The court observed that the significance of the word 'judgment' assumed a special importance in those High Courts which had ordinary civil jurisdiction depending on the valuation of the suit or the action and that those High Courts were Calcutta, Bombay, Madras as also Delhi and Jammu & Kashmir. The principles laid down by the Supreme Court can be gathered from paras 106 and 115 of the judgment and these are as under:—

“106. Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgement within the meaning of the Letters Patent.”

“115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgements which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgement.”

In *Jugal Kishore Paliwal v. S. Sat Jit Singh* [(1984) 1 SCC 358](2), the question before the Supreme Court was if an order allowing amendment of the written statement was appealable under S. 10 of the Delhi High Court Act 1966. The Division Bench of this court had held that the appeal was not maintainable. The Supreme Court held that the High Court was wrong in refusing to go into the merits of the case on the ground that the appeal was not maintainable. It referred to its decision in *Shah Babulal Khimji's case* (supra) wherein various parameters and conditions had been laid down under which an appeal could lie from a single Judge to the Division Bench. The Supreme Court further observed as under:—



“In the instant case as the amendment of the written statement was sought at the time of framing issues and it vitally affects the right of the parties and seeks to work some injustice to the plaintiff, it merits serious consideration by the appellate court on the question whether or not amendment should be allowed. It would certainly not be a purely interlocutory order against which no appeal before the LPA bench would be maintainable”.

Reference may also be made to a Bench decision of this court in *Satish Chander Yadav v. Lt. Col Gaj Singh Yadav* [FAO (OS) No. 55/85, decided on 13-8-85(3)]. In this case an appeal was filed before the Division Bench against an order of the single Judge framing two issues described as preliminary issues. It was contended that the appeal was not competent. The court, however, observed that the order deciding to try the suit in a particular manner, after framing two preliminary issues and postponing the settlement of other issues, did amount to a judgment, and so it was appealable. In the present case the effect of the impugned order is that it enlarges the scope of the suit and directs the plaintiff to add a party against his wishes resulting in filing and amended plaint containing consequential amendments on the addition of a party. The addition of the party would also amount to a de novo trial as far as the party added is concerned. It cannot, therefore, be said that the impugned order is not a judgment. It does affect vital and valuable right of the plaintiff and decides matters of moment. The plaintiff has complained that the order has worked serious injustice to him. We would, therefore, hold that the order is a ‘judgment’ within the meaning of sub-s. (1) of S. 10 of the Delhi High Court Act, 1966 and is, therefore, appealable.”

(Emphasis supplied)

15. Consequently, even if not expressly enumerated under Order XLIII of the CPC, the Appeal would nevertheless be maintainable. Accordingly, the Impugned Order, having determined and affected the substantive rights of the parties involved, is liable to be treated as a *judgment*, and therefore, the present Appeal is maintainable under Section 10 of the DHC Act.

16. Now turning to the merits, the Appellant has argued that a third party to the contract cannot be impleaded in a suit for specific performance.



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17. A plain reading of the Order I, Rule 10(2) of the CPC makes it evident that the Court, at any stage of the proceedings, may either upon or without the application of either party, remove the name of any party improperly joined or the name of any 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*, be added. The prerequisite of impleading a third party, as enshrined in the Rule, makes it abundantly clear that the issue that arose between the parties must only be considered, and any such party that does not have nexus with those issues are not to be impleaded.

18. It is a trite law that the scope of the suit for specific performance is limited to determining the issue with regard to the enforceability of the contract in question. The decision in the suit for specific performance is not a judgment in *rem* but results in adjudication of rights between the contracting parties.

19. The law stands settled by the Supreme Court in the Judgment of ***Kasturi vs. Iyyamperumal & Ors***⁸, wherein the Supreme Court observed that a suit for specific performance is essentially contract-centric, and the inclusion of third parties claiming an independent or adverse title would convert a simple contract suit into one for title or possession, thereby enlarging its scope beyond the contract. A third party cannot be impleaded merely to ascertain who is in possession of the contracted property or to prevent multiplicity of suits. Under Order I Rule 10(2) CPC, only those parties may be added whose presence is

⁸ (2005) 6 SCC 733



necessary for complete adjudication. The Supreme Court further laid down two tests to determine a ‘necessary party’: (i) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; or (ii) no effective decree can be passed in their absence. A ‘proper party’ was explained to mean one whose presence is required for effectively adjudicating the controversies in the suit. The relevant portion of the judgement is set out as follows:

“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.

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15. As discussed herein earlier, 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 herein earlier, 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 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. 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 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 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 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 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.”

(Emphasis Supplied)

20. The Supreme Court in **Kasturi** (*supra*) referred to two authoritative precedents on the subject, namely, **Anil Kumar Singh vs. Shivnath Mishra**⁹ and **Vijay Pratap & Ors. vs. Sambhu Saran Sinha & Ors.**¹⁰. In **Anil Kumar** (*supra*), the Supreme Court considered two vital issues, (a) whether the person, who was not a party to the

⁹ 1995 (3) SCC 147

¹⁰ 1996 (10) SCC 53



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contract, but claimed co-ownership by an independent decree, could be impleaded as a necessary or proper party in a suit for specific performance, and (b) whether the case attracted Order XXII Rule 10 CPC. Both issues were answered in the negative. The Supreme Court had concluded that since the Respondent was not a party to the agreement to sell, it could not be said that without his presence, the dispute to specific performance could not be determined and therefore, he was not a necessary party.

21. The Supreme Court in the Judgement of ***Vijay Pratap*** (*supra*) held that if such petitioners are made parties to the suit, the dispute would shift to one between them, thereby converting the suit for specific performance into a regular title suit. The same position was reiterated in the Judgement of ***Bharat Karsondas Thakkar vs. Kiran Construction Company & Ors.***¹¹.

22. Learned counsel for Respondent No.4 has attempted to bring the present case within an exception to the above-mentioned general rule. He has relied upon the judgment passed in ***Sumtibai*** (*supra*) in which ***Kasturi*** (*supra*) was distinguished in terms of the peculiar facts and circumstances of the said case. The question before the Supreme Court was whether the LR's of the Original Defendant, which came to be impleaded, can file a written statement and adduce evidence in the suit. In the present case, the registered sale deed by which the subject property was purchased shows that the shop in dispute was sold in favour of not only the Defendant but also his sons. Therefore, *prima facie*, LR's of Defendant were found to have a fair semblance of title or

¹¹ 2008 (13) SCC 658



interest and a right to take defence by way of filing a written statement. The relevant paragraph of the Judgement is as follows:

“14. In view of the aforesaid decisions we are of the opinion that Kasturi case [(2005) 6 SCC 733] 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.”

23. The next reliance is placed on the Division Bench pronouncement of this Court titled **Rajesh Kumar Arora** (*supra*). However, the said judgment would not form a *ratio decidendi* for the present case for the following reasons:

- i. In that case, the Appeal before the Coordinate Bench arose from two applications: (a) an application under Order I Rule 10 filed by the Appellants/Plaintiffs seeking deletion of two co-plaintiffs on the basis of an MOU executed among them, which was dismissed by the learned Single Judge; and (b) another application under Order I, Rule 10 of the CPC filed by the proposed defendant seeking impleadment, which was allowed by the learned Single Judge; and
- ii. The Coordinate Bench, after examining the merits, allowed the first application. However, with respect to the second application, it dismissed the Appeal *simpliciter* without going into the merits of the Appeal at all.
- iii. Furthermore, in that case, there were already other suits pending among the defendant(s) and the proposed defendant.



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24. Assuming, in the present case, the Respondent is able to *prima facie* demonstrate a semblance of title and interest in the suit property, we are of the considered opinion that he cannot satisfy the mandate of Order I Rule 10 of the CPC. His impleadment is not necessary for effectually and completely adjudicating upon the questions involved in the suit; on the contrary, such impleadment would introduce collateral issues and expand the scope of the contract. Moreover, it will be contrary to the settled law laid down by the Hon'ble Supreme Court in ***Kasturi*** (*supra*) and ***Anil Kumar Singh*** (*supra*).

25. Under Order I Rule 10 of the CPC, only the 'necessary' or 'proper' parties are required to be impleaded; however, the learned Single Judge has not held that the Applicant/Respondent No.4 is either a 'necessary' or 'proper' party. In a suit for specific performance of an agreement to sell, the core issue before the Court is the enforceability of the contract, if any. The reasoning adopted by the learned Single Judge that Respondent No.4 has claimed co-ownership and that refusal to implead would lead to multiplicity of litigation ought not to have resulted in his addition as a party, particularly in the context of a suit for specific performance. If Respondent No.4 is permitted to be impleaded in the present case, the nature of the suit will be converted and it may lead to a title suit between the Appellant and Respondent No.4. While Respondent No.4 having some interest/right over the suit property is contentious, it cannot be answered in the present suit in question.

26. Learned counsel for the parties have not made any other submissions.



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CONCLUSION

27. In light of the foregoing discussion, the Impugned Order passed by the learned Single Judge allowing the application bearing I.A. No. 23592/2023 in CS(COMM) 590/2023 and thereby impleading Respondent No. 4 as Defendant No. 2 cannot be sustained and is, therefore, set aside.

28. The present Appeal is allowed with liberty to Respondent No. 4 to contest his claim before the Court of competent jurisdiction by way of an independent suit. Accordingly, the Appeal, along with the pending application, is disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 26, 2025/sg/er