Before P. C. Jain, C.J. and S. S. Kang, J.

KRISHAN LAL AND OTHERS,—*Petitioners.*

versus

TEK CHAND AND OTHERS,—*Respondents.*

Civil Revision No. 2668 of 1985

July 29, 1986.

Code of Civil Procedure (V of 1908)—Order 1, Rule 10—Specific Relief Act (XLVII of 1983)—Section 19—Suit for specific performance of an agreement to sell filed by the vendee against vendor—Another person claiming to be joint owner alongwith vendor filing application seeking to be impleaded as defendant—Applicant not a party to the agreement to sell—Such applicant—Whether entitled to be impleaded as a defendant as being a necessary or proper party.

Held, that the provisions of sub rule (2) of Rule 10 of Order 1 of the Code of Civil Procedure, 1908 empower the Court to direct that any person who ought to have been joined as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit to be added as parties. In a simple suit for specific performance of a contract for sale a decree sought against the defendant for the purpose of enforcement of the contract entered into between the executants, no relief is sought against strangers to the agreement for sale and, indeed, there is no right of relief in such a suit against a person who is not a party to the agreement. In such a case, the plaintiff would be in the event of his getting a decree for specific performance, get executed a sale deed which will bind only the executants thereof and would not effect the position of persons who are not parties to the agreement. Section 19 of the Specific Relief Act, 1963 further clearly lays down that specific performance of a contract may be enforced against either party thereto. So, in such a suit a person who is not a party to the agreement for sale is neither a necessary nor a proper party. It is well recognised that the plaintiff is the dominus litus in a suit and such plaintiff should not be forced to fight against a person against whom no relief is claimed. The crucial test is that the presence of such a person should be necessary to settle the questions involved in the suit. For settling these questions the presence of strangers who are not parties to the contract is not necessary or proper. It is thus plain that unless a party proposed to be added has directly an interest in the controversy and its adjudication, the power conferred under sub rule (2) of Rule 10 of Order 1 cannot be invoked. In this view of the matter in a suit for specific performance of a contract of a sale a person not a party to the agreement to sell and claiming to be joint owner of the subject matter of the dispute is not entitled to be impleaded

as a defendant as such a person is neither a necessary nor a proper party.

(Para 4)

Gurdev Singh and another *vs.* Paras Ram and another, 1985 P.L.J. 315.

Atul Sharma *vs.* Gurvinder Singh and others, 1985 R.L.R. 226. (Over-ruled)

Petition for revision under section 115 *C.P.C. from the order of the Court of Shri N. L. Pruthi, HCS, Sub Judge, 1st Class, Rohtak dated* 15*th June,* 1985 *dismissing the application and leaving the parties to bear their own costs.*

S. C. Kapoor, Advocate, *for the Petitioner.*

Ram Rang, Advocate, *for the Respondent.*

JUDGMENT

Sukhdev Singh Kang, J.

(1) Whether in a suit for specific performance of a contract of sale a third person claiming to be a joint owner of the property (the subject-matter of the suit) is entitled to be impleaded as a defendant, is a short but interesting question raised in this revision petition.

(2) In view of the pristinely legal nature of the issue involved, it is not necessary to recount the facts in detail. It will suffice to mention that Tek Chand filed a suit against Ram Tikaya for specific performance of a contract of sale pertaining to property bearing No. 113/11d. B-V situated in the town of Maham, Tehsil and District Rohtak. Krishan Lal, Smt. Mohni Devi, Chander Bhushan and Usha Rani claiming themselves to be the sons and daughters of Smt. Ram Bai, daughter of Jiwan Dass, father of Ram Tikaya defendant, filed an application under Order 1, rule 10, Civil Procedure Code, for impleading them as defendants to the suit, *inter alia,* on the plea that Ram Tikaya and Jiwan Dass had jointly purchased the property in dispute from the Custodian in equal shares,—*vide* Conveyance Deed dated April 17, 1962. Jiwan Dass died on June 6, 1977 leaving behind Ram Tikaya (son) and Smt. Lakshmi Bai and Smt. Ram Bai (daughters) as legal heirs and successors to his one-half share in the above-said property. On the death of Jiwan Dass, Ram Tikaya became owner of 2/3rd share whereas Smt. Ram Bai and Smt.

Lakshmi Bai inherited 1/6th share each thereof. Ram Tikaya defendant had no right or authority to sell or transfer the share of the applicants in any way or enter into any agreement of sale on their behalf and, therefore, suit for specific performance to the extent of share of the applicants was not maintainable. Tek Chand plaintiff naturally resisted this intrusion in the suit and opposed the application pleading that the applicants had no *locus standi* to be made parties because Ram Tikaya defendant was the sole owner of the property in dispute. The application had been moved *mala fide* at the instance of Ram Tikaya defendant to delay the proceedings. No relief was claimed against the alleged sisters of defendant Ram Tikaya and the applicants, who were not necessary or proper parties. The learned trial Judge noted that Ram Tikaya defendant had not denied the execution of the agreement to sell. It was executed by him in his individual capacity and there was nothing to suggest from the document that Smt. Lakshmi Bai or Smt. Ram Bai had any interest in the subject-matter of the suit. Smt. Lakshmi Bai had previously filed a similar application, which had been declined on December 18, 1983. He came to the conclusion that the applicants were not necessary parties and dismissed the application. Aggrieved, the petitioners filed a revision petition against the order of the learned trial Judge.

(3) During the course of the hearing of the revision petition, Shri Subhash Kapoor, learned counsel for the petitioners, brought to my notice a decision of a learned Single Judge of this Court in, *Gurdev Singh and another* v. *Paras Ram and another* (1), wherein a revision petition filed by the petitioners against the order of the trial Court declining to implead them as defendants had been allowed. They had pleaded that the vendor, who had agreed to sell the property in dispute, was not the owner thereof and the same was in exclusive possession of the applicants. The learned Single Judge took the view that the applicants were necessary parties for the determination of the controversy. If they were not impleaded as parties and the suit for specific performance was decreed without determining the issue as to whether the vendor owned the plot in dispute, there would be another round of litigation at the time of execution or in a separate suit and since the suit was at the initial stage, it was just and proper to implead the revision petitioners as defendants in the suit so that the whole controversy could be determined at one and the same time. However, earlier sitting singly, mainly basing myself

(1) 1985 P.L.J. 315.

on the ratio of the illuminating Full Bench decision of the Madhya Pradesh High Court in *Panna Khushali and another* v. *Jeewan Lal Mathoo Khatik and another* (2), while deciding the case *Chand Kishore and another* v. *Satish Kumar and others* (3), I had taken the view that a third person claiming to be a joint owner of the subject-matter of the dispute in a suit for specific performance of a contract for sale, is not entitled to be impleaded as a party. So, noticing the cleavage in the judicial opinion with this jurisdiction, I referred the matter for decision by a Division Bench. That is now the case is before us in the Division Bench.

(4) In a simple suit for specific performance of a contract for sale a decree sought against the defendant is for the purpose of enforcement of the contract entered into between the executants. No relief is sought against strangers to the agreement for sale and, indeed, there is no right of relief in such a suit against a person, who is not a party to the agreement. The question involved in the suit does not relate to any liabilities or rights of the strangers in the property in dispute. In such a case, the plaintiff would, in the event of his getting a decree for specific performance, get executed a sale deed which will bind only the executants thereof, namely, the plaintiff and the defendant and would not affect the position of persons who are not parties to the agreement. Section 19 of the Specific Relief Act clearly lays down that specific performance of a contract may be enforced against either party thereto. So, in such a suit a person who is not a party to the agreement for sale is neither a necessary nor a proper party. It is well recognized that the plaintiff is the *dominus litus* in a suit. He should not, unless the provisions of any statute so require, be enforced to fight against a person against whom he does not claim or seek any relief. The scope of the suit ought not to be enlarged and the suit turned into a title suit between one of the either parties to the contract and a stranger to the contract. The provisions of sub-rule (2) of Rule 10 of Order I, Civil Procedure Code, empower the Court to direct that any person who ought to have been joined as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit be added as parties. The crucial test is that the presence of such a person should be necessary to settle the questions involved in the suit. In a suit for specific performance

(2) 1976 M.P. 148 (F.B.).

(3) A.I.R. 1984 P.L.J. 127.

the questions involved in the suit are the execution of the contract for sale, the readiness and willingness of the plaintiff to perform his part of the contract and the refusal or inability of the defendant to execute the contract. For settling these questions the presence of strangers who are not parties to the contract is not necessary. It is not even proper. A person who claims title adverse to the parties to the contract is not a necessary or a proper party. No relief is sought against such a person. The addition of such a person will enlarge the scope of the suit and change its nature and turn it into a title suit. This is not the object of sub-rule (2) of Rule 10 of Order 1, Civil Procedure Code. The provisions of Rule 10 are *ex facie* enabling and clearly indicate the conditions for the exercise of that power. It is only when the Court comes to the conclusion that for the purpose of full adjudication of the matter in issue, a party which is not added is necessary that the provisions of sub-rule (2) of Rule 10 are attracted. It is, thus, plain that unless a party proposed to be added has directly an interest in the controversy and its adjudication, the power cannot be invoked.

(5) The ambit and scope of sub-rule (2) of Rule 10 of Order I of the Code of Civil Procedure was defined succinctly by R. S. Sarkaria, J. (as his Lordship then was) in *Banarsi Dass-Durga Prasad* v. *Panna Lal-Ram Richhpal Oswal and others,* (4) wherein it was held :

> "Under sub-para (2) of Order 1, rule 10, Civil Procedure Code, a person may be added as a party to a suit in two cases only, i.e. when he ought to have been joined and is not so joined, i.e. when he is a necessary party, or, when without his presence the questions in the suit cannot be completely decided. There is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the suit into which he seeks intrusion. A person may not be added as a defendant merely because he would be incidentally affected by the judgment."

It was further observed :

> "As a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition.

(4) A.I.R. 1969 Pb. & Hary. 57.

The reason is that the plaintiff is the *dominus litus*. He is the master of the suit. He cannot be compelled to fight against whom he does not wish to fight and against whom he does not claim any relief."

It was concluded :

"The word 'may' in sub-rule (2) imports a discretion. In exercising that discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit. Only in exceptional cases, where the Court finds that the addition of the new defendant is absolutely necessary to enable it to adjudicate effectively and completely the matter in controversy between the parties, will it add a person as a defendant without the consent of the plaintiff."

(6) A similar view was taken by Sodhi, J. in *Manmohan Singh* v. *Sat Narain and another,* (5). The learned Judge held that what had to be seen in allowing or disallowing an application under Order I, rule 10, Civil Procedure Code, was whether the addition of a new party would be consistent with the scope of the enquiry as necessitated in the pending suit and that in the absence of such a party it would not be possible to completely and effectively dispose of the controversy in the pending suit and not that some other suit may be avoided.

(7) Chief Justice R. S. Narula affirmed the view taken in the above two decisions in *Kaka Singh* v. *Rohi Singh and others,* (6).

(8) A discordant note was, however, struck in *Atul Sharma* v. *Gurvinder Singh and others,* (7). A somewhat detailed reference to the facts and exposition of law in this case is called for. Gurinder Singh filed a suit for specific performance of an agreement of sale entered into between him and Ram Sarup, Ram Chand and others. Atul Sharma and others filed an application for being impleaded as parties to the suit alleging that the property which was the subject-matter of the agreement was co-parcenary property and as such, Ram Sarup was not competent to sell it except for legal necessity or the benefit of the estate. The trial Judge,

(5) A.I.R. 1971 Pb. & Hary. 400.
(6) A.I.R. 1978 Pb. & Hary. 30.
(7) 1985 R.L.R. 226.

relying on a decision of the Madras High Court in *N. T. Palanisamy Chattiar by agent V. D. Seetarama Mudaliar* v. *Komara Chettiar and others,* (8), and some observations in *Banarsi Dass-Durga Prasad,* (Supra) declined the application. The applicants came up in revision. The learned Single Judge recorded his inability to follow the ratio of the decision in *Banarsi Dass-Durga Prasad's case* (supra). He was of the view that Banarsi Dass was certainly a proper if not a necessary party. He took the view that this case did not constitute a binding precedent, because the decision was rendered on the peculiar facts of the case. He came to the conclusion that in the face of a clear enunciation of law by the Supreme Court in *Bal Mukand* v. *Kamla Wati and others,* (9), it cannot be held that in a suit for specific performance of an agreement to sell, co-parceners have no right to resist the specific performance of an agreement of sale by the Karta. The learned Single Judge relied on the following passage in *Bal Mukand's* case (supra) :—

> "That the adult members would not have resisted the claim for specific performance if they were satisfied that the transaction was of benefit to the family. It was possible that the land which was intended to be sold had risen in value by the time the present suit was instituted and therefore the other members of the family were contesting the plaintiff's claim. Apart from that the adult members of the family were well within their rights in saying that no part of family property could be parted with or agreed to be parted with by the Manager on the ground of alleged benefit to the family without consulting them. Here there was no allegation of any such consultation. In these circumstances the Courts below were right in dismissing the suit for specific performance."

He held that it could no longer be said that the co-parcener by getting himself impleaded as a party seeks only a decision on his or vendor's title. Instead, he seeks to oppose the right of the plaintiff to enforce the agreement of sale specifically against the co-parcenery property and his prayer cannot be declined on the ratio of the decision in *Seetarama Mudaliar's* case (supra). He was also of the view that the rule laid down by the Full Bench of the Madhya Pradesh High Court in *Panna Khushali's* case (supra) runs counter

(8) A.I.R. 1950 Madras 91.
(9) 1964 S.C. 1385.

to the Supreme Court's decision in *Bal Mukand's* case (supra). So, it is manifest that the learned Single Judge has not followed the view in *Banarsi Dass-Durga Prasad's case* (supra), because he was of the view that it ran counter to the ratio of *Bal Mukand's* case (supra).

9. In order to appreciate the true exposition of law by the final Court in *Bal Mukand's* case (supra) it will be beneficial to refer to the facts of this case which find detailed mention in the report of the decision of that case by a Division Bench of this Court in *Balmukand L. Hira Nand* v. *Pindi Dass (deceased) and others,* (10). In the opening paragraph of the judgment, facts have been marshalled. It reads :

> "One Balmukand, a resident of Batala, filed a suit against Pindi Das, Haveli Ram, Khem Chand and Sat Pal, sons of Nihal Chand, residents of Batala, on 12th February, 1947, for possession by specific performance of a contract of sale of 3/20 share of land measuring 13 kanals 1 marla situate in Mauza Faizpur (included in Batala) on payment of of Rs. 9,687/8/-. The plaintiff alleged that all the four defendants were real brothers and constituted a joint Hindu family of which Pindi Das defendant was the karkun and manager, that defendant No. 1 as manager was fully competent to make alienation of the property of the family, that the property in suit was the property of the joint Hindu family, that on 1st October, 1945 defendant No. 1 as Manager of the family entered into a transaction of sale of the property in dispute with the plaintiff at the rate of Rs. 250 per marla and received a sum of Rs. 100 as earnest money from the plaintiff, that the defendants in spite of being repeatedly asked to receive the remaining sale money from the plaintiff and execute and complete a sale deed in respect of the land in suit had failed to perform their part of the contract, that the price of the land in question by calculation came to Rs. 9,787/8/-, and that after deducting Rs. 100 paid as earnest money the plaintiff was entitled to have specific performance of the contract on payment of Rs. 9,687/8/-."

It is clear from the above factual narration that the plaintiff had pleaded that all the four defendants were real brothers and constituted a joint Hindu family of which Pindi Das (defendant) was the

(10) A.I.R. 1958 Pb. 267.

Karta (manager) and as a manager of the family entered into a transaction of sale of the property in dispute with the plaintiff and had received earnest money. It is also clear from the pleadings that the plaintiff averred that the defendants (all of them) in spite of being repeatedly asked to receive the remaining sale money from the plaintiff and execute and complete a sale deed in respect of the land in suit, had failed to perform their part of the contract and that he was entitled to have specific performance of the contract. The case of the plaintiff was that though the agreement to sell had been executed by Pindi Das defendant, but it was on behalf of the members of the joint Hindu family and all the co-parceners had been joined as defendants and a decree for specific performance had been sought against all of them. It was in this context that the apex Court had made the observations, reproduced above, in *Bal Mukand's* case (supra). However, it may be highlighted that in *Bal Mukand's* case (supra) there was no dispute with regard to impleading of the parties. All the coparceners had already been impleaded as defendants and a decree for specific performance of the contract was sought against them. They had naturally to take all the defences open to them. This decision with respect to the learned Judge, does not help in construing the true scope of Order I, rule 10(2), Civil Procedure Code. This matter has been meticulously examined in great detail in *Panna Khushali's* case (supra). The Full Bench of the Madhya Pradesh High Court framed the following question :—

> "Whether in a suit for specific performance of a contract for sale, instituted by a purchaser against the vendor, a stranger to the contract, who, contending that the contracted property is a joint family property, of which he is also the co-owner, wants to intervene in the suit, is entitled to be added as a party."

Various relevant statutory provisions bearing on the subject were noticed and analysed and, in the light of the ratio of the decisions in *Razia Begum* v. *Anwar Begum,* (11) *Banaras Bank* v. *Bhagwan Das,* (12), *Prem Sukh Gulgulia* v. *Habib Ullah,* (13) and decision of the Judicial Commissioner of Tripura in *Kahotra Mohan* v. *Mohd. Sadir,* (14), the question

(11) A.I.R. 1958 S.C. 886.
(12) A.I.R. 1947 All 18.
(13) A.I.R. 1945 Cal. 355.
(14) A.I.R. 1964 Tripura 16.

was answered in the negative and it was held that the applicants were not necessary parties to the suit. It was further held that the strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the co-owners of the contracted property, are neither necessary nor proper parties and are, therefore, not entitled to be joined as parties to the suit. Earlier, a Full Bench of the Madras High Court in *T. Rangayya Reddi* v. *V. R. Subramanya Aiyar and others,* (15), had also taken the view that in a suit for specific performance, it is not permissible to implead those who are strangers and whose claim has to be investigated apart from the agreement of which specific performance is sought to be claimed. In *Rasiklal Shankerlal Soni* v. *Natverlal Shankerlal Upadhyaya and others,* (16), defendant's sisters, who had not joined him in the execution of the agreement for sale, were not allowed to be impleaded as parties to the suit for specific performance though they had claimed that they were entitled to inherit the suit property under the Hindu Law and the agreement for sale regarding the suit property entered into by the brother was not binding on them. Recently, the Orissa High Court in *Sadhu Behera and others* v. *Krishna Chandra Sutar and another,* (17), has held that in a suit for specific performance of a contract for sale instituted by a purchaser against the vendor, a stranger to the contract is not entitled to be added as a party even if he contended that the contracted property is joint family property of which he was also a co-owner. In such a case, especially when there was no prayer for possession in the suit if the third parties were added, it will enlarge the scope of the suit and the suit would be turned to be a suit for title. It cannot be said that to avoid multiplicity of proceedings it would be proper to join third parties since merely on this ground, a party which does not fall within the scope of the expression which governs the question for determination as to who is a proper party, cannot be joined as a proper party to the suit. When the plaintiff is willing to take the title, which his vendor had, and no relief for possession of the suit property was claimed nor any relief was claimed against the applicants, the latter cannot be allowed to be joined as a party.

(10) Shri Subhash Kapoor, learned counsel for the petitioners, referred to us to a decision of a Bombay High Court in *Shivashankerappa Mahadavappa Parakanhatti* v. *Shivappa Parappa Kupati and*

(15) A.I.R. 1918 Madras 681.
(16) A.I.R. 1975 Gujrat 178.
(17) A.I.R. 1985 Orissa 93.

others, (18), where it had been held that in a suit for specific performance of contract of sale of certain land, persons who claim the property adversely to the vendor and who are in possession of the property and whose possession is likely to defeat the claim of the plaintiff to possession may be joined as defendants. It is clear from the report of the case that the plaintiff in that suit had made not only the vendor, who had contracted to sell the property to the plaintiff, as a party-defendant, but he had also impleaded defendants 2 to 20, who were strangers to the contract, as parties because defendant No. 2 was interested in a portion of the property and the other defendants were in actual possession thereof. When the suit was decreed against defendants 2 to 20 also, they, in appeal, contended that no decree could be passed against them because they were not necessary parties to the suit for specific performance. This plea was rejected and it was in this context that the above observations were made.

(11) Mr. Kapoor also invited our attention to a Division Bench decision of the Andhra Pradesh High Court in *Khaja Abdul Khader* v. *Mahabub Saheb and others*, (19), wherein it was held that the expression "settle all the questions involved in the suit" used in Order I, rule 10(2), Civil Procedure Code, has to be liberally interpreted and questions common to the parties to the suit and third party can be decided by impleading such third party. It may be mentioned that this case did not relate to a suit for specific performance. It was a suit for ejectment and possession of land. So it is not helpful in deciding the issue before us.

(12) It is clear from the report of the decision in *Gurdev Singh and another* v. *Paras Ram and another*, (20), that the matter was not canvassed before the learned Single Judge in any detail with reference to principle or precedent. The provisions of sub-rule (2) of Rule 10 of the Order I of the Code of Civil Procedure and Section 19 of the Specific Relief Act were not considered and analysed.

(13) In the result we are of the view that the preponderance of judicial opinion in the country is in favour of the view that in a suit for specific performance of a contract of sale, a person not party

(18) A.I.R. (30) 1943 Bombay 27.
(19) A.I.R. 1979 A.P. 152.
(20) 1985 P.L.J. 315.

to the agreement to sell, and claiming to be joint owner of the subject-matter of the suit, is not entitled to be impleaded as a defendant. He is neither a necessary nor a proper party and we fully agree in this view and answer the question posed at the threshold in the negative. We further hold that the decisions in *Gurdev Singh and another* v. *Paras Ram and another,* (21) and *Atul Sharma* v. *Gurvinder Singh and others,* (22), do not lay down the correct law and are overruled. No costs.

H.S.B.

Before R. N. Mittal, J.

PIARA SINGH,—*Appellant.*

versus

JAGTAR SINGH AND ANOTHER,—*Respondents.*

Regular First Appeal No. 1817 *of* 1978

August 6, 1986.

Foreign Exchange Regulation Act (XLVI of 1973)—*Sections* 31(1) *and* 63—*Foreign national acquiring commercial property in India with foreign exchange—Prior permission of the Reserve Bank of India not obtained by such vendee prior to purchase as required by Section* 31(1)—*Contravention of Section* 31(1)—*Whether makes transaction void—Property so bought—Whether liable to confiscation.*

Held, that Section 31(1) of the Foreign Exchange Regulation Act, 1973, provides that without the previous permission of the Reserve Bank of India a person who is not a citizen of India, cannot acquire property, but it does not provide that if someone purchases any property the title therein does not pass to him. What the Act provides is that if a person contravenes Section 31 and some other sections, he can be penalized under Section 50 and can also be prosecuted under Section 56. However, there is no provision in the Act which makes a transaction void or says that no title in the property passes to the purchaser in case there is contravention of the provisions of sub section (1) of Section 31. Section 63 contains a provision regarding confiscation of certain properties but it does not contain any provision for confiscation if there is breach of the provision of sub-section (1) of Section 31. Therefore, it has to be held

(21) 1985 P.L.J. 315.
(22) 1985 R.L.R. 226.