Reserved On : 04/04/2025
Pronounced On : 21/04/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2603 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==========

Approved for Reporting	Yes	No
	Yes	

==========

CHUNILAL NANJIBHAI
Versus
LHRS OF DECD. BAPUSINH RAMSANGBHAI JADAV & ORS.

==========

Appearance:
VMP LEGAL(7210) for the Petitioner(s) No. 1
DECEASED LITIGANT for the Respondent(s) No. 7.1,7.2
DELETED for the Respondent(s) No. 3,5
MR RATHIN P RAVAL(5013) for the Respondent(s) No. 7.1.1,7.1.2,7.1.3,7.1.4,7.2.1,7.2.2,7.2.3,7.2.4,7.2.5,7.3,7.4,8.1,8.2,8.3,8.4
MS ESHA S BHAVSAR(12116) for the Respondent(s) No. 1.1,1.2,1.3,1.4,1.5
NOTICE SERVED for the Respondent(s) No. 6
NOTICE SERVED BY DS for the Respondent(s) No. 2,4

==========

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. **Rule** returnable forthwith. Learned advocate Mr. Rathin Raval waives service of notice of rule on behalf of the contesting respondents and learned advocate Ms. Esha S. Bhavsar waives service of notice of rule on behalf respondent Nos. 1.1 to 1.5.

2. Though served, none appeared on behalf of other respondents. Even otherwise, presence of other respondents are not required for adjudication of writ application.

3. The present writ application is filed under Article 227 of the Constitution of India seeking following relief :

> *"A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ to quash and set aside the order dated 02/12/2022 passed by the Principal Senior Civil Judge, Morbi below Exh. 139 in Regular Civil Suit No.105 of 2017 at Annexure - "B" and dismiss the application Exh. 139 at Annexure - "A" filed by Respondent Nos.7.1.1 to 7.1.4, 7.2.1 to 7.2.5, 7.3 and 7.4 and Respondent No.8.1 to 8.4 before the Civil Court at Morbi;*
>
> *(B) Pending the hearing and final disposal of the present petition, Your Lordships may be pleased to stay the further proceedings of Regular Civil Suit No.105 of 2017 pending before the Principal Senior Civil Judge, Morbi;*
>
> *(C) Ex-parte ad-interim relief in terms of prayer (B) above may kindly be granted;*
>
> *(D) Pass an order of costs against the Respondent Nos.7.1.1 to 7.1.4, 7.2.1 to 7.2.5, 7.3 and 7.4 and Respondent No.8.1 to 8.4.*
>
> *(E) For such other and further reliefs as the Honourable Court may deem fit in the facts and circumstances of the case."*

4. The parties will be referred as far as possible as per their original position in the suit.

5. Heard learned advocates appearing for the respective

parties at length.

Short Fact of the case.

6.0 The petitioner herein original defendant No.6 of Regular Civil Suit No. 105 of 2017 (old Special Civil Suit No. 57 of 2011) now pending before the Principal Senior Civil Judge, Morbi filed by predecessor of respondent Nos.1.1 to 1.5 (hereinafter referred to plaintiffs) against the petitioner as respondent Nos. 2 to 6, who happens to be defendant Nos. 1 to 5.

6.1 The original plaintiff happens to be brother of defendant nos. 2 to 4 and brother-in-law of defendant No.5. It is the case of the plaintiff that defendant Nos. 2 to 5 have unauthorisdely executed registered sale deed on 17.06.2010 in favour of defendant No.1 in relation to suit property who in turn executed registered sale-deed dated 07.03.2011 in favour of petitioner – defendant no.6 .

6.2 The original plaintiff came to know about the aforesaid sale-deed challenged it by way of aforesaid suit, and sought for other reliefs. The original plaintiff died during the pendency of the suit, whose legal heirs are brought on record.

6.3 The predecessors of respondent No. 7.1 to 8.4 (herein after referred to the applicants) happens to be real brother of original plaintiffs namely Bapusinh Ramsangbhai Jadav, who have filed impugned application below Exh. 139 to be joined in the aforesaid suit.

6.4 The plaintiff has not objected the impugned application but petitioner – defendant No.6 has objected it.

6.5 After hearing the parties, the trial Court vide its order dated 02.12.2022 has allowed the application, thereby, permitted respondent Nos. 7.1 to 8.4 herein to be joined as co-plaintiffs, which is impugned in the present writ application.

Submission of the petitioner-defendant No.6

7.0 Learned advocate Mr. Vimal Patel for the petitioner would submit that the trial Court has erroneously and without appreciating the objection of defendant No.6 has wrongly allowed the impugned application, thereby, committed gross error of law.

7.1 Learned advocate Mr. Patel would further submit that the applicants have due knowledge about the pendency of

the suit since long which can be confirmed from bare reading of the order passed by the revenue authority wherein the applicants have questioned the revenue entries mutated in favour of the defendant No.1 & 6 due to execution of registered sale deed dated 17.06.2010 and subsequent sale deed in favour of petitioner and having lost before the revenue authorities filed the impugned application, which ought to have been rejected.

7.2 Learned advocate Mr. Patel would further submit that applicant having not challenged the sale deeds in question like original plaintiff within stipulated time from the date of their knowledge, suit gets time barred for them, thereby, they could not be allowed to join as co-plaintiffs in the suit.

7.3 Learned advocate Mr. Patel would further submit that the trial Court has completely lost sight of the factum of Section 21 of Limitation Act, while allowing the impugned application. He would submit that when claim/challenge of applicants is ex-facie time barred, their application requires to be rejected.

7.4 Learned advocate Mr. Patel would further submit that though main prayer made in the suit challenging the sale deeds in question but consequential prayers would seek

declaration of inheritance right of original plaintiff and asking for his share from defendants and not others. Now, if applicants are to be joined, who have not questioned the sale deed within period of limitation so prescribed under the Act, would not be entitled to claim and get such consequential relief in their favour as it is time barred.

7.5 Learned advocate Mr. Patel would further submit that assuming without admitting that main prayer of original plaintiff would be accepted then also, to the extent of share of original plaintiff, sale-deed would be disturbed and to that extent only original plaintiff - his successors would be entitled to get share in the suit property but other brothers of plaintiff having not questioned the sale-deeds in question would not be entitled to get their share as not questioned sale-deeds in time.

7.6 To buttress his argument, learned advocate Mr. Patel for the petitioner would refer and rely upon the following decisions :-

(i) Ramprasad Dagaduram Vs. Vijaykumar Motilal Hirakhanwala and others reported in AIR 1967 SC 278 (relied upon Para- 4, 7, 15, 17 & 19)

(ii) N.V. Srinivasa Murthy and others Vs. Mariyamma (dead) by proposed Lrs. And others reported in (2005)5 SCC 548 (relied upon Para-8,9,12 &14)

(iii) Tulebahadur Mahavir Prasad since Dece. Through heirs Vs. Dineshbhai Shivlal Patel reported in 2014(0) AIJEL-HC 231592 (relied upon Para-13 & 14)

(iv) Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and others reported in (2018) 11 SCC 722 (relied upon Para-11).

(v) Manjulaben D/o Jagjivanbhai Lallubhai and Wd/o Kanaiyala Morardas Vs. Kakshaben D/o Mansukhbhai Jagjivanbha and W/o Mukesh Patel reported in 2019 (0) AIJEL-HC 241455 (relied upon Para- 21 & 22)

7.7 Learned advocate Mr. Patel for the petitioner would request this Court to allow the present writ application.

Submission respondents- applicants

8.0 Learned advocate Mr. Rathin Raval for respondents-applicants has vehemently objected the present writ application and requested this Court not to entertain the

present writ application while exercising its power of under Article 227 of the Constitution of India.

8.1 Learned advocate Mr. Raval would further submit that predecessor of applicants happen to be real brothers of original plaintiff, who has questioned the sale-deed executed by the original defendant nos. 2 to 5 in favour of defendant nos. 1 and 6 on the ground that defendant nos.2 to 5 are not absolute owner of the suit property and no right to execute sale deed in question, then, applicants are one of the co-owners of suit property and so they are necessary and proper party, requires to be joined in the suit.

8.2 Learned advocate Mr. Raval would further submit that as per Order 1 rule 10(2) of CPC, at any stage of the proceedings, party can be added as plaintiff or a defendant, thereby, question of limitation is not required to be taken note of while adjudicating the impugned application. He would further submit that the scope and ambit of adjudication of impugned application would be depend upon the applicants who desirous to be joined are necessary and or proper party or not and not beyond it.

8.3 Learned advocate Mr. Raval would further submit that it is undisputed fact that the predecessors of the applicants

happens to be real brother of original plaintiff having interest in suit property, although initially questioned revenue entries mutated in favour of defendant Nos.1 and 6 are not only necessary but proper party to the suit, thereby, the trial Court has correctly allowed the impugned application.

8.4 Learned advocate Mr. Raval would further submit that at relevant point of time, the defendant No.6 has objected the suit by contending inter-alia that all necessary parties are not joined in the suit and once applicants who have filed impugned application which is not objected by plaintiffs, later on, petitioner can not object impugned application. He would submit that plaintiff is *dominus litis* and having not objected the joining of applicants as co-plaintiffs in the suit, defendant No.6 has no right to object it.

8.5 Learned advocate Mr. Raval would further submit that during the pendency of the present petition, the plaintiff has submitted his oral evidence who has been cross examined by the defendants but surprisingly defendants have requested the trial Court to call upon the applicants to make their stand clear as to whether the applicants are desirous to cross examine the plaintiff, despite the fact that this Court vide its order dated 23.02.2023 has stayed the impugned order of

their joining in the suit. So, he would submit that now, the petitioner can not object the presence of the applicants in the suit proceedings. He would submit that defendant No.6 can not approbate and reprobate.

8.6 Learned advocate Mr. Raval would further submit that the trial has commenced and it reached to the evidence of defendant no.6, the question so raised by defendant No.6 in the present writ application can be raised and can be decided on completion of the trial. So, learned advocate Mr. Raval would further respectfully submit that assuming without admitting that there is an error of law, while passing the impugned order which is none still as per settled legal position of law, same can not be interfered by this Court while exercising its power under Article 227 of the Constitution of India.

8.7 To buttress his argument, learned advocate Mr. Raval would refer and rely upon the judgment of this Court in the case of ***Narendrabhai Dalsukhbhai Parmar Vs. Vaishaliben Narendrabhai Parmar reported in 2022 (0) AIJEL-HC 243787***. (relied upon Para-5.2 & 5.4)

9. No other and further submissions made by any of learned advocates appearing for the respective parties.

Analysis

10. Before adverting to the issue involved in the matter, I would to remind myself scope and power available of this Court while exercising its power under Article 227 of the Constitution of India which is succinctly discussed in following two decisions of Honourable Supreme Court of India. First one in a case of ***Sameer Suresh Gupta TR PA Holder vs. Rahul Kumar Agarwal, reported in 2013 (9) SCC 374*****,** the relevant observation of the aforesaid judgment reads as under:-

> *"[6] In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered by the two Judge Bench of this Court in Surya Dev Rai v. Ram Chander Rai and Ors., 2003 6 SCC 675. After considering various facets of the issue, the two Judge Bench culled out the following principles:*
>
> *(1) Amendment by Act No. 46 of 1999 with effect from 01-07-2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.*
>
> *(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by the Code of Civil Procedure Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.*
>
> *(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e. when a subordinate Court is*

found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the 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.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is 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.

(6) A patent error is an error which is self-evident, i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view, the error cannot be called gross or patent.

(7) 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. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow

and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

7. The same question was considered by another Bench in Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] , and it was held: (SCC pp. 347-49, para 49)

"(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere

with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of the Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [Waryam Singh v. Amarnath, AIR 1954 SC 215] and the principles in Waryam Singh [Waryam Singh v. Amarnath, AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [Waryam Singh v. Amarnath, AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitu-

tional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

(emphasis supplied)

10.1 The second decision in a case of ***Garment Craft v. Prakash Chand Goel, reported in (2022) 4 SCC 181***, wherein the Hon'ble Supreme Court of India has held as under:-

> *"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel.Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a Court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based.* ***Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior Court or tribunal.****[Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69]* ***The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases****, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*
>
> ***16.*** *Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. [Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)*
>
> *"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior Courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong deci-*

sions made within the limits of the jurisdiction of the subordinate Courts or tribunals. Exercise of this power and interfering with the orders of the Courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate Court or substitute its own judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior Court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or tribunal has come to."

(emphasis supplied)

11. Now, adverting to the facts of case and issue germen in present writ application, as to whether the trial Court has committed any serious error of law or jurisdictional error while allowing the impugned application thereby allowed the applicants to be joined as co-plaintiffs in the suit ?

12. To appreciate the submissions made by the learned advocates for the respective parties, I would like to refer Order 1 Rule 10 (2) of CPC, which reads as under :-

"ORDER I-PARTIES OF SUITS

Rule 10 (2) - Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff

or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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."

13. The principal submission made by the learned advocate Mr. Vimal Patel for the petitioner would be in relation to issue of limitation and in relation to joining of applicants as co-plaintiffs would be time barred for them to challenge sale deeds in question. The argument so canvassed by the learned Mr. Patel may look attractive but require rejection as it is contrary to the aforesaid provisions of law.

14. The plain reading of Oder 1 rule 10 (2) of CPC would suggest that the Court may at any stage of proceedings either upon or without application of either party, join any person who is necessary party. So, what is required to be considered while adjudicating such application for joining party in such suit as to whether party proposed to be joined is a necessary and or proper party or not. The question of limitation and other factors would not germane while adjudicating joining party application, otherwise said provision become otiose.

15. Learned advocate Mr. Patel has neither submitted nor

addressed on the aforesaid aspect, thereby, would not contended that applicants are neither necessary nor proper party. Be that as it may, the Court is required to consider application of joining party within the scope and ambit of under Order 1 rule 10(2) of CPC and if it is found that the applicants are necessary and or proper parties then, it requires to allow such application. Once such proposed party joined in the suit thereafter, question of his entitlement to get relief if joined as co-plaintiff or any relief to be passed against him if joined as co-defendant would arise.

16. It would be profitable to refer the decisions of Hon'ble Supreme Court of India in the case of ***Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and others reported in (2010) 7 SCC 417***, more particularly in Para- 13, 14 & 15.

> *"13. 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. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2)* of Code of Civil Procedure *(`Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*
>
> > *10 (2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly*

joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A `necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a `necessary party' is not impleaded, the suit itself is liable to be dismissed. A `proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

17. Thus, while adjudicating impugned application, the trial Court was not required to examine issue of limitation so raised by the defendant no.6 if considered, having so observed earlier, provisions of under Order I rule 10(2) of

CPC become otiose. Nonetheless, applicability of Section 21 of Limitation Act would requires to be examined by trial Court while adjudicating the suit and so also deciding prayers made in the suit.

18. So far as the decisions cited by the learned advocate Mr. Patel for the petitioner would not ipso-facto applied as at this stage, the Court require to consider only one fact as to whether applicants are necessary and or a proper parties or not.

19. The question of limitation, right of applicants to claim reliefs in the suit and their entitlement to claim any share in the suit property etc. are issues to be raised and to be decided by the trial Court on completion of the trial of the suit. So, at this stage, this Court would also neither like to go into nor examined and accept such submissions made by the learned advocate Mr. Patel for the petitioner but only observing that it is open for the defendant No.6 to raise all these issues before the trial Court germane from the pleading and evidence to be laid by the parties in that regards.

20. Having appreciated the arguments canvassed by the learned advocates appearing for the respective parties, keep

the aforesaid provision of law in mind, plaintiff being *dominus litis* not objecting impugned application and taking into account ratio of ***Mumbai International (supra),*** if applied to the case on hand, predecessor of applicants happens to be brother of original plaintiff having question sale-deeds executed in relation to the suit property which alleged to have been unauthorisdely sold by defendant No. 2 to 5 in favour of defendant No.1 in turn defendant No.6 and having claimed their right, title, and interest in the suit property belong to their forefathers, I am of the view that the applicants are necessary and proper parties in the suit proceedings.

21. Even otherwise, as per settled legal position of law and as per ratio of the case of ***Sameer Suresh Gupta (supra) and Garment Craft (supra)*** merely some error of law on the part of the trial Court while passing order, is no ground to interfere by this Court while exercising its power under Article 227 of the Constitution of India as stated herein above. Furthermore, trial of the suit is in mid-way, Once plaint get amended and applicants filed their pleadings thereby, defendant no.6 has all right to amend his written statement. The parties can raise all factual and legal contentions, thereafter necessary issues may be framed by the trial Court and parties are at liberty to lead their

evidence in support of their pleadings and on completion of the trial of the suit, all these issues can be examined and adjudicated by the trial Court in accordance with law. Thus, at this stage, no serious prejudice caused to the defendant No.6 when the trial Court has permitted applicants to be joined as co-plaintiffs. Thus, the order impugned would not suffer from any procedural irregularity and or illegality. I do not find any infirmity in the order impugned in writ application.

Conclusion

22. The upshot of the aforesaid discussion, observation, and reasons, I am of the view that the order impugned in the present writ application does not suffers from any serious error of law and or jurisdictional error, whereby, no interference of this Court is required while exercising its power under Article 227 of the Constitution of India. Thus, present writ application is found meritless and requires to be dismissed and is hereby dismissed.

23. Ad- interim relief granted earlier stands vacated forthwith. Rule is discharged. No order as to costs.

Sd/-

(MAULIK J.SHELAT,J)

SALIM/

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHAMMAD SALIM(HC01108), STENO GR II, at High Court of Gujarat on 21/04/2025 14:08:39