



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 13270 OF 2025 (GM-CPC)

BETWEEN:

MR. ELIAS JEROME PAIS,
S/O LATE DENIS PAIS,
AGED ABOUT 64 YEARS,
R/AT BAREBAIL,
BEJAI POST,
MANGALURU – 575 004.

...PETITIONER

(BY SRI UDAYA PRAKASH MULIYA., ADVOCATE)

AND:

1. MISS THERESA MONTEIRO,
D/O LATE LAWRENCE HILARY MONTHEIRO,
AGED ABOUT 73 YEARS,
R/AT NEKKARE ROAD,
KUDUPU POST
MANGALURU – 575 028.

2. MRS. ANGELINE PEREIRA,
D/O LATE MARY MENEZES,
AGED ABOUT 75 YEARS,
R/AT ACHUKODY HOUSE,
PACHANADY VILLAGE,
BONDEL, MANGALURU – 575 008.





3. MR. VINCENT C MENENZES,
D/O LATE MARY MENENZES,
AGED ABOUT 75 YEARS,
R/AT ACHUKODY HOUSE,
PACHANADY VILLAGE,
BONDEL, MANGALURU – 575 008.
4. LANCY S MENENZES,
D/O MARY MENENZES,
AGED ABOUT 60 YEARS,
NEAR RAILWAY STATION,
CHIKKA PUTTUR, PUTTUR TALUK,
D.K – 574 201.
5. MRS. HILDA MONTHERIO,
W/O SEBASTIAN MONTHERIO,
AGED ABOUT 79 YEARS,
R/AT CONCESSO COMPOUND,
KOTTARA CROSS, BEJAI,
MANGALURU – 575 004.
6. MR. SANTHOSH M MONTHERIO,
S/O LATE SEBASTIAN MONTHERIO,
AGED ABOUT 56 YEARS,
R/AT CONCESSO COMPOUND,
KOTTARA CROSS, BEJAI,
MANGALURU – 575 004.
7. MR. SHAILESH M MONTHERIO,
S/O LATE SEBASTIAN MONTHERIO,
AGED ABOUT 53 YEARS,
R/AT CONCESSO COMPOUND,
KOTTARA CROSS, BEJAI,
MANGALURU – 575 004.



8. MRS. MARCELINE LOBO,
W/O PETER LOBO,
AGED ABOUT 89 YEARS,
R/AT NO. 103, PETMARE APARTMENTS,
KOTTARA CROSS, BEJAI,
MANGALURU – 575 004.
9. MRS. FELCITA MONTHERIO,
W/O JUSE LOBO,
AGED ABOUT 47 YEARS,
R/AT FLAT NO. G-2,
HAZIRABI'S RESIDENCY,
KANTEBAINA, VASCO-DA-GAMA,
GOA – 403 802.
10. THERESA MONTHERIO,
W/O LATE JOHN MONTHERIO,
AGED ABOUT 74 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
11. MR. JASON,
S/O LATE JOHN MONTHERIO,
AGED ABOUT 43 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
12. MS. JACINTHA MONTHERIO,
S/O LATE JOHN MONTHERIO,
AGED ABOUT 57 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.



13. MS. JULIANA MONTHERIO,
S/O LATE JOHN MONTHERIO,
AGED ABOUT 52 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
14. MS. JUSTIN MONTHERIO,
S/O LATE JOHN MONTHERIO,
AGED ABOUT 49 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
15. MS. JUDITH MONTHERIO,
S/O LATE JOHN MONTHERIO,
AGED ABOUT 47 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
16. LAVINA MONTHEIRO,
S/O LATE JOHN MONTHEIRO,
AGED ABOUT 45 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST, KUDUPU VILLAGE,
MANGALURU – 575 028.
17. THERESA MONTHERIO,
D/O LATE LAWRENCE HILARY MONTHERIO,
AGED MAJOR,
R/AT NEKKARE HOUSE,
PEDAMALE POST,
KUDUPU VILLAGE,
MANGALURU – 575 028.



18. FLORINE FURTADO,
W/O LATE LEO FURTADO,
AGED ABOUT 57 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST,
KUDUPU VILLAGE,
MANGALURU – 575 028.
19. MR. JOHN S. MONTHERIO,
S/O LATE PAUL MONTHERIO,
AGED ABOUT 60 YEARS,
R/AT NEKKARE HOUSE,
PEDAMALE POST,
KUDUPU VILLAGE,
MANGALURU – 575 028.

...RESPONDENTS

(BY SRI RAKESH KINI, ADVCOATE FOR R-1;
SRI ABHINAY Y.T., ADVOCATE FOR R-19)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER DTD 24.02.2025 PASSED ON IA NO. V FILED U/O I RULE 10 R/W SECTION 151 OF CPC IN O.S 20/2023 PENDING ON THE FILE OF I ADDL. SENIOR CIVIL JUDGE AND CJM MANGALURU VIDE ANNEX-A.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

Petitioner is before this Court calling in question an order dated 24.02.2025 by which certain respondents are deleted from the array of defendants in O.S.No.20/2023.

2. Heard Sri.Udaya Prakash Mulia, learned counsel appearing for the petitioner, Sri.Rakesh Kini, learned counsel appearing for respondent No.1 and Sri.Abhinay Y.T., learned counsel appearing for respondent No.19.

3. The petitioner-plaintiff files a suit seeking Specific Performance of an Agreement to Sell dated 24.07.2007 entered into between the defendant No.1-respondent No.1 and the petitioner, seeking a direction to execute a registered sale deed in favour of the petitioner. Before the concerned Court, the defendant Nos.2 to 19 file an application seeking their deletion from the array of defendants in an application under Order I Rule 10 of the Code of Civil Procedure. The concerned Court in terms of the order impugned permits deletion of defendant



Nos.2 to 19. The plaintiff is now before this Court calling in question the said order.

4. Learned counsel appearing for the petitioner submits that there is a partition in the property and therefore, all the persons would be necessary parties to be the defendants in the said Original Suit. He would admit that they may not be proper parties but they are necessary parties and therefore, would contend that the order of the concerned Court is an error in law and requires to be interfered.

5. *Per contra*, the respondents seek to contend that the transaction is between the petitioner-plaintiff and defendant No.1. The claim is suit for Specific Performance. Other defendants have nothing to do with the transaction between the petitioner and defendant No.1. The petitioner is said to be claiming the sale deed to be registered in respect of 1/8th undivided right of defendant No.1. He would seek to place reliance upon the judgment of the Apex Court in the case of **KASTURI V. IYYAMPERUMAL, (2005) 6 SCC 733**, to buttress his submission that addition of a party in a suit for



Specific Performance who is not privy to the contract, should not be permitted.

6. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the material on record.

7. The afore-narrated facts are not in dispute.

8. The factum of the transaction between the plaintiff and defendant No.1, is a matter of record.

9. The plaintiff and defendant No.1 enter into an Agreement of Sale in the year 2007. That is sought to be taken forward by filing a suit for Specific Performance by the present plaintiff. In the plaint, the defendant Nos.2 to 19 are also arrayed as party respondents on the score that they are members of the same family. Being members of the same family cannot mean that in a suit for specific performance, the parties who are not parties to the contract, can be impleaded. The concerned Court in terms of its order impugned allows the application filed by defendant No.1 seeking deletion of



defendant Nos.2 to 19. The reasons rendered for so being reads as follows:

"7. Admittedly the plaintiff has filed the present suit against the defendants for specific performance of contract. As settled principle of law mere quoting wrong provision of law is not fatal to the case. On perusal of plaint it reveals that the plaintiff has filed the suit for specific performance of contract alleging that he has entered into agreement with the defendant No.1. No where in the plaint it is mentioned that defendant No.2 to 19 are entered into agreement or they are the necessary parties to the suit. In many of rulings the Hon'ble Apex court held that it is a discretionary power of the court to entertain such application in order to avoid multiplicity of proceedings the application deserves to be allowed, as is not possible to conduct a mini trial. In order to adjudicate the matter in fact, defendant No.2 to 19 are not necessary and proper parties to the suit. Hence, I answer the above point in the Affirmative and I proceed to pass the following:

-ORDER-

The I.A.No.V filed by the defendant No.1 U/o 1 Rule 10 R/w Section 151 of CPC is hereby allowed.

To carryout amended plaint and to furnish amended plaint.

Call on 07.03.2025."

10. The concerned Court holds that defendant No.1 and the plaintiff have a contract and the other defendants are not necessary parties to the suit. The reasons so rendered by the



concerned Court though far from being satisfactory, it carries the appropriate purport of law. The Apex Court in ***KASTURI supra***, interpreting the Specific Relief Act with particular reference to an application under Order I Rule 10 of CPC where addition of a party was sought, at paragraphs 3, 5, 16 and 18, holds as follows:

"3. Before we take up this question for decision in detail, the material facts leading to the filing of this case may be narrated at a short compass. The appellant herein filed the suit against Respondents 2 and 3 for specific performance of a contract entered into between the second respondent acting as a power of attorney of the third respondent on one hand and the appellant on the other for sale of the contracted property. In this suit for specific performance of the contract for sale, Respondents 1 and 4 to 11, who were admittedly not parties to the contract and setting up a claim of independent title and possession over the contracted property, filed an application to get themselves added in the suit as defendants. The trial court allowed the application on the ground that as Respondents 1 and 4 to 11 were claiming title and possession of the contracted property, they must be held to have a direct interest in the subject-matter of the suit, and therefore, entitled to be added as party-defendants in the suit as their presence would be necessary to decide the controversies raised in the present suit. The High Court in revision confirmed the said order and accordingly this Special Leave Petition was filed against the aforesaid order of the High Court at the instance of the appellant which on grant of special leave was taken up for hearing in presence of the parties.

5. In deciding whether a stranger or a third party to the contract is entitled to be added in a suit for specific performance of contract for sale as a defendant, it is not necessary for us to delve in depth into the scope of Order



1 Rule 10 sub-rule (1) CPC under which only the addition of a plaintiff in the suit may be directed.

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale."



11. In the light of the order being in tune with law and the suit being of Specific Performance of an Agreement of Sale and the Agreement of Sale being entered into between the defendant No.1 and the plaintiff, I do not find any perversity in the order passed by the concerned Court allowing the application filed by defendant No.1 and deleting defendant Nos.2 to 19 from the array of defendants before the concerned Court.`

The petition lacking in merit, stands ***dismissed***.

Sd/-
(M.NAGAPRASANNA)
JUDGE