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IN THE HIGH COURT OF DELHI

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CM(M) No.784/2003

Bhim Singh Petitioner.
through: Mr.Aly Mirza, Adv.

VERSUS

Amar Nath & Ors. Respondents
through: Mr.Ravi Gupta, Adv. and Mr.Ankit Jain, Adv.

RESERVED ON: 11.03.2008

DATE OF DECISION:
25.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The petitioner had filed a suit for specific performance of an agreement to sell dated 13.12.1988 executed between the plaintiff and respondents No.2 to 6 pertaining to 14 bigha and 5 biswa of land in the revenue estate of Village Bakoli. In said suit an ex-parte ad-interim injunction was issued in favour of the petitioner and against respondents No.2 to 6 restraining them from transferring, encumbering or parting with possession of the

suit land till the next date. The said interim order was extended from time to time and continues to enure in favour of the petitioner. Notwithstanding the order prohibiting respondents No.2 to 6 from selling the land in question they sold the land to respondent No.1, Amar Nath, by a registered sale deed on 30.6.1997. According to Amar Nath when he applied to the Consolidation Authority for mutating the land in his name on 27.8.2003 he was informed of the Court injunction and a refusal by the revenue authorities to mutate the suit land in his name. Accordingly, he filed an application under Order 1 Rule 10 CPC for being impleaded as a defendant in the suit. The said application was allowed vide order dated 16.10.2003, principally on the ground that a purchaser under the defendants would be a necessary party for the reason if plaintiff ultimately succeeds the purchaser under the defendants would be required to join in executing a conveyance deed in favour of the plaintiff and hence his presence before the Court would be necessary.

2. The order impleading respondent No.1 as a defendant in the suit has been challenged by the plaintiff by way of the instant petition.

3. The issue which arises for consideration has to be answered in light of the provisions of sub-rule 2 of Rule 10 of Order 1 of the Code of Civil Procedure. It reads as under:-

“(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.*'"

4. A bare perusal of the legislative provision reveals that the sweep thereof is controlled by the expression '*settle all the questions involved in the suit be added*'. It is thus apparent that the focus has not to be whether the applicant is a person who ought to have been joined as a necessary or a proper party to the suit, the focus has to be whether the presence of the applicant is necessary in order to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

5. One extreme end of the submission could be that since the plaintiff is a *dominus litus* and cannot be compelled to litigate against a person qua whom no relief is prayed for, the expression '*all the questions involved in the suit*' would mean only the questions or disputes between the parties to the litigation and do not include a question or dispute between one or more of the parties and a third party. The other extreme end could be to urge that the expression would include the presence of such parties who may be affected keeping in view the defence raised in the

suit as also the actions of the defendant.

6. In the decision of this Court dated 22nd March 2007 in CRP No.749/2002 R.K.K.R. Steel Ltd. vs. Northern Steel and General Mills & Anr. with reference to reported decisions it was held as under:-

“34. Independent of the afore-noted decisions cited by learned counsel, a perusal of the commentaries under Order 1 Rule 10 of the Code of Civil Procedure reveal a plethora of decisions which have considered the ambit of the power of the Court in impleading a person as a proper party. The authorities have explained the meaning of the phrase '*all the questions involved in the suit*'.

35. The decisions illustrate a wide spectrum of instances when intervention was allowed and when refused.

36. From the decisions, no discernible principle governing the discretionary power of the Court emerges, for the simple reason, the spectrum of claims is fairly wide and therefore it would be inadvisable to cast the discretionary power in a straight jacket of an inflexible formula. However, one principle emerges, that the language employed in the rule vests a very wide discretion in the Court.”

7. Noting the decision reported as 1950-2 All.E.R. 605 Doffus Miegiet Compagnies vs. Bank of England it was observed that the said decision brings out that the true test lies not so much in an analysis of what are the constituents of the applicant's rights but rather in what would be the result on the subject matter of the action if those rights could be established.

8. It is a well known recognized principle of law that an agreement to sell does not create an interest in a property. An agreement to sell creates a right in favour of the prospective

purchaser to enforce the agreement against the intending seller. Obedience could be enforced by the personal presence of the defendant or through a Court appointed officer.

9. Holding that a purchaser of a property during pendency of a suit for specific performance would be affected by the decree, a Division Bench of this Court, in the decision reported as DRJ 1992 (23) 179 Smt.Mohinder Kaur vs. Smt.Sudarshan Krishnamurthy held that such a purchaser is entitled to be substituted in place of the existing defendant under Order 22 Rule 10 of the Code of Civil Procedure.

10. In the decision reported as AIR 1983 SC 124 Khem Chand Shankar Choudhary vs. Vishnu Hari Patil a transferee pendente lite during pendency of a suit for partition of an estate was held entitled to be impleaded as a party.

11. The ratio of afore-noted 2 decisions can be culled out that upon assignment of the defendant's interest and the defendant being left with no interest, the assignee would be entitled to step into the shoes of the defendant. The ratio of the second decision is that a transferee pendente lite is entitled to make a request that shares on partition may be so assigned in an equitable manner so as to protect the possession of the transferee pendente lite.

12. Thus, in a suit for specific performance of an agreement to sell, since specific performance is a discretionary

remedy the transferee pendente lite would be entitled to protect his interest by calling upon the Court to award damages and not specifically enforce the agreement to sell. In that view of the legal position he would be a person whose presence may be necessary to settle the questions which arise for consideration in the suit. I repeat one of the questions to be settled in a suit for specific performance would be whether the discretionary remedy of a specific performance should not be exercised by recompensing the plaintiff with damages.

13. But, a Court of Justice has other rules and other duties to discharge. The first and foremost is the duty to uphold the majesty of law by ensuring compliance with its orders. In the decision reported as AIR 1996 SC 135 Surjit Singh vs. Harbans Singh an assignee pendente lite was not permitted to join the proceedings on account of the transfer being in defiance of a restraint order.

14. In para 4 of the report, their Lordships of the Hon'ble Supreme Court observed as under:-

“4. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes..... Therefore, the assignees-

respondents could not have been impleaded by the Trial Court as parties to the suit, in disobedience of its Orders. The principles of *lis pendens* are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasized is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the Courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the Courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 Cr.P.C.”

15. The reason given by the learned Trial Judge that respondent No.1 has to be impleaded as a defendant for the reason his presence would be required to execute the sale deed if plaintiff succeeds in the suit may also be dealt with.

16. The doctrine of *lis pendens* contained in Section 52 of the Transfer of Property Act is a complete answer. Section 52 of the Transfer of Property Act reads as under:-

“52. Transfer of property pending suit relating thereto. - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise deal with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”

17. *Lis pendens* literary means a pending suit; and the doctrine of *lis pendens* has been defined as the jurisdiction,

power or control which a Court acquires over property involved in a suit pending the continuance of the action and until final judgment thereunder.

18. In the decision reported as 1972 (2) SCC 200 Jaya Ram Mudaliar vs. Ayya Swami & Ors. the scope of *lis pendens* was explained as under:-

“Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject matter of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the Court to deal with it and thus make the proceedings infructuous.”

19. In decision reported as AIR 1973 SC 2537 Rajender Singh & Ors. vs. Santa Singh & Ors., referring to the doctrine of *lis pendens* it was observed as under:-

“15. The doctrine of *lis pendens* was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a Court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated. (Emphasis supplied)”

20. *Lis pendens* is based on the doctrine of expediency but for this it would be impossible for an action to be brought to a

successful termination if crafty defendants alienate the suit property before judgment and the plaintiff is driven to commence de novo proceedings, public policy requires sanctity qua judicial proceedings to be maintained. It is immaterial whether the alienee pendente lite had or had no notice of the pending proceedings (*Rappal v. Gopal AIR 1970 Kerala 180*). Question of good faith or bona fides also does not arise for its application (*Mohd. Ali Abdul vs. Bisahmi AIR 1973 Mysore 133, Shanu Ram vs. Bashsher Nath & Ors. 1966 (68) PLR (D) 44, Balwinder Kaur vs. Financial Commissioner (Appeals) Punjab & Anr. AIR 1987 P&H 189*). This rule applies to suits for specific performance. In *Joginder Singh Bedi vs. Sardar Singh Narang & Ors 26 (1984) DLT 162 (Delhi)*, it was held that Section 19(b) of the Specific Relief Act also does not protect a transferee pending litigation. It is immaterial whether the alienee *pendente lite* had or had no notice of the pending proceedings. Nor it is necessary that the alienee must be impleaded as a party to the suit. Such transferee has no prior equity nor any pre-existing right. This is also the law laid down by a Division Bench of the Madhya Pradesh High Court in *Munnialal & Anr vs. Bhaiyselal & Ors. AIR 1962 MP 34* and a Full Bench of Mysore High Court in *Khajath vs. Mohammad Hussain (1964) Myse LJ 236 (FB)* and later followed in *Mohd. Ali vs. Abdulla AIR 1973 Mys 137 (DB)*.

21. Looked at from any angle, the impugned order is

patently contrary to law and hence corrective action is required.

22. The petition is allowed. Impugned order dated 16.10.2003 is quashed. Application filed by respondent No.1 for impleadment is dismissed.

23. No costs.

25th March, 2008
mm/dk

(PRADEEP NANDRAJOG)
JUDGE