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ABDUL WAHID

..... Appellant

versus

HAMEED MIAN (DECD.) THRU LR_s AND OR_s.

..... Respondents

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: REVA KHETRAPAL, J.

1. This appeal is directed against the judgment and decree dated 13th November, 2006 passed by the learned Additional District Judge, Delhi, whereby the suit of the plaintiffs was partly decreed and it was ordered that the Sale Deed dated 6th November, 1987 in favour of the defendants no.2 and 3 (the appellants herein) in respect of the suit property bearing no. 878, Haveli Azam Khan, Chitli Kabar, Jama Masjid, Delhi be cancelled as illegal, void and ineffective; and the legal heirs of the defendants hand over the vacant and physical possession of the first floor of the said property to the plaintiffs (the respondents herein).

2. Briefly stated, the facts of the case are that the suit property was purchased by one Mohd. Mian in the year 1930. He died in the year 1947, leaving behind two sons namely Ahmed Mian and Mahmood Mian. Ahmed Mian and Mahmood Mian inherited the suit property in equal shares and were residing in it along with their families. Mahmood Mian was in occupation of the first floor of the said property and Ahmed Mian of the ground floor.

3. The plaintiffs no.1, 2, 3 and the defendant no.1, Khursheed Ahmed are the sons of Late Ahmed Mian and the plaintiff no.4 is the wife of Late Ahmed Mian.

4. The plaintiffs filed a suit for permanent injunction on 27th October, 1987 against the two defendants, namely, Khursheed Ahmed, son of Ahmed Mian and Mahmood Mian, son of Mohd. Mian.

5. On 30th October, 1987, the summons of the suit were served upon the defendants and the defendant no.2 Mahmood Mian was represented through his wife Mst Anis Fatima. The learned trial Court in the presence of the defendant no.1 and Anis Fatima passed an order to maintain the status quo in respect of the suit property till further orders.

6. It is alleged by the plaintiffs that on 06th November, 1987 in spite of the orders of the status quo passed by the Court, Mahmood Mian sold his share of the property i.e. the first floor of the disputed property, and handed over the possession thereof to Abdul Waheed and Fakhra Sultan (the appellants herein). A registered Sale Deed dated 6th November,

1987 was executed in their favour, which, it is alleged by the plaintiffs had been fraudulently got executed from Mehmood Mian by the brother of the plaintiffs (the defendant no.1) who had a vested interest in the property of Mehmood Mian, at a time when Mehmood Mian was not in a mentally fit state of mind and was suffering from a hip bone fracture, and that too in total violation of the status quo order dated 30th November, 1987. This resulted in the filing of a contempt application under Order XXXIX Rule 2A of the Code of Civil Procedure, which is stated to be pending.

7. On the basis of the aforesaid subsequent events, the plaintiff amended his plaint and converted it from a suit for permanent injunction to a suit for declaration, permanent injunction, possession and consequential relief. The amended suit was filed on 8th January, 1988, alleging that the Sale Deed dated 6th November, 1987 was totally illegal and void and not binding upon the plaintiffs, and, as such a declaration be given declaring the Sale Deed as null and void and in the alternative, a decree of possession be passed in favour of the plaintiffs and against the defendants. The purchasers Abdul Waheed and Fakhra Sultana were joined as defendants no.2 and 3 whereas the name of the defendant no.2 in the original suit, viz., Mehmood Mian was deleted due to his death.

8. The suit was initially tried in the Court of the learned Civil Judge but at the final arguments stage, a question of valuation of the suit for the purposes of court fees and jurisdiction arose and on the basis of the

findings of the learned Civil Judge, the case was transferred to the District Court for disposal. During the pendency of the said suit, the plaintiffs no.1 and 4 as well as defendants no.1,2 and 3 died and their legal representatives were brought on record from time to time. On 30th October, 1993, on the basis of a preliminary objection as to maintainability of the suit, the suit was dismissed; but in appeal, the order was set aside and the matter was remanded for fresh trial with a direction to the Trial Court to re-frame the issues on the pleadings of the parties and to give an opportunity to the parties to adduce their evidence.

9. In the amended suit, the plaintiffs asserted that the suit property till date had not been partitioned and it was well settled that any legal heir who inherits the property from his ancestors cannot sell his share of the property or any portion thereof before partition of the same was effected between the legal heirs. It is further alleged that the plaintiffs on 16th December, 1987 came to know that the defendant no.1, who is the brother of the plaintiff, had taken undue advantage of the old age and infirmity of Mehmood Mian and in order to fulfill his lust for the property, had in collusion with the defendants no.2 and 3 (Abdul Waheed and Fakhra Sultan) hatched a conspiracy for the sale of the share of Mehmood Mian in favour of the defendants no.2 and 3. The said defendants represented to Mehmood Mian that they were only getting some documents signed for the purpose of the present suit and Mehmood Mian, being an illiterate and infirm person, was oblivious of

the fact that his property was being sold by the defendant no.1 in collusion with the defendants no.2 and 3. It is further alleged by the plaintiffs that the entire sale consideration had been received by the defendant no.1 Khursheed Ahmed on 18th November, 1987. When Mehmood Mian learnt that his share of the property had been sold by misrepresentation and fraudulent means, he suffered a severe mental shock and consequently died on the night intervening 18th and 19th November, 1987.

10. A joint written statement was filed by the defendants in which various preliminary objections were taken *inter alia* being that the plaintiffs had no *locus standii* to file the suit, that the suit was without any cause of action, that the suit was bad for non-joinder of necessary parties, that it had not been properly valued for the purposes of court fees and jurisdiction and that it was *malafide*.

11. On merits, it was admitted that Mehmood Mian was the owner of half share of the disputed property. It was, however, categorically denied that the defendant no.1 in collusion with the other defendants had hatched a conspiracy for the sale of the share of Mehmood Mian in favour of the defendants no.2 and 3. It was alleged by the defendants that the sale made by Mehmood Mian was perfectly valid and pertained to his share of the property. Paragraphs 5 and 6 of the written statement admitted that the suit property was not divided, while denying the allegations of undue influence of fraud as levelled in the plaint.

12. The plaintiffs affirmed the contents of their plaint in the replication and on the basis of the pleadings of the parties, the following issues were framed on 24th January, 2000: -

“1) Whether the plaintiffs have no locus standi to file the present suit? OPD

2) Whether the suit is bad for non-joinder and mis-joinder of necessary parties as per preliminary objection no.4? OPD

3) Whether plaintiffs have not valued the suit properly for the purpose of court fee and jurisdiction? Onus on parties.

4) Whether the sale deed dated 6-11-87 executed by Mahmood Mian in favour of defendants no.2 and 3 in respect of property no. 878, Gali Masjid, Delhi is illegal, void and ineffective. If so, its effect? OPD

5) Whether the plaintiffs are entitled to decree of possession by pre-emption or on payment of such sum as the court deem to be fit to the above mentioned property? OPP

6) Whether the plaintiffs are entitled to relief of possession as prayed for, with respect to suit property? OPP

7) Whether the plaintiffs are entitled to decree of perpetual injunction as prayed for? OPP

8) Whether the suit in its present form is maintainable? OPP

9) Relief.”

13. In support of their case, the plaintiffs examined three witnesses namely PW1 Mohd. Aslam, PW-2 Mohd. Illiyas, PW-3 Liyaquat Ali.

The defendants also examined three witnesses namely DW-1 Abdul Waheed, DW-2 Ahsanul Haq and DW-3 Khurshid Mian.

14. As regards the issue no.1, it was found by the learned Trial Court that the plaintiffs had the *locus standi* to file the suit and this issue was decided in favour of the plaintiffs and against the defendants. In the course of arguments before this Court, the findings on this issue were not seriously disputed except to state that the plaintiffs had the *locus standi* on the basis of the plea of pre-emption raised by them in their plaint, but the said plea having been withdrawn during the pendency of the suit, the plaintiffs had no *locus standi*.

15. The findings on issue no.3 which related to the valuation of the suit for the purposes of court fees and jurisdiction also went unassailed in view of the fact that in compliance with the directions of the court, the plaintiffs had deposited the balance court fees.

16. The plaintiffs having given up their right of pre-emption by making a statement in court on 21st September, 1992, issue no.5 did not arise and no findings were consequently returned thereon.

17. Issue no.7 was decided in favour of the defendants and against the plaintiffs and the findings thereon were also not challenged in the course of arguments.

18. As already stated above, issue no.8 which pertained to the maintainability of the suit was framed on 21st September, 1992 and was decided in favour of the defendants by the Civil Judge on 30th October,

1993 resulting in the dismissal of the suit as not maintainable; but in appeal that decision was reversed and the suit was held to be maintainable by the Court of the Additional District Judge vide order dated 4th July, 1995. That order was not challenged by the defendants further and thus, the findings given by the Additional District Judge in her order dated 4th July, 1995 on the issue no.8 attained finality.

19. This leaves me with issues no.2,4,6 and 9. Since issues no.6 and 9 relate to the relief to be afforded to the plaintiffs and depend upon the findings returned on issues no.2 and 4, it is deemed expedient to deal with the findings on issues no.2 and 4 in the first instance.

20. As regards the findings on issue no.2, the learned counsel for the appellant, Mr. H.L. Narula, Advocate, while relying upon the decision rendered by the Supreme Court in the case reported as *Jaladi Suguna (Dead) through L.R.s vs. Satya Sai Central Trust & Ors., AIR 2008 Supreme Court 2866* contended that by virtue of the provisions of Order XXII Rule 4, on the death of the defendant no.2, Mehmood Mian in the original suit, the legal representatives who succeeded to his estate ought to have been brought on record and in their absence the judgment of the Trial Court was not sustainable, having been rendered against a dead person. The learned counsel contended that an application for bringing on record the legal representatives of the deceased defendant no.2, Mehmood Mian was filed by the plaintiff under Order VII Rule 7; Order 1 Rule 10 and Order VI Rule 17 read with Section 151 of the Code of

Civil Procedure, *inter alia* praying for addition of the names of the vendees as co-defendants in place of the defendant no.2 by striking off his name. The said application was allowed by the order dated 25th May, 1988 and the names of the vendees, i.e. defendants no.2 and 3 were substituted in place of the name of Mehmood Mian, the defendant no.2. It was contended by the learned counsel that the legal representatives of the defendant no.2, Mehmood Mian, not having been brought on record and in particular, his wife Mst Anis Fatima, who died long after Mehmood Mian, the suit must be held to have abated.

21. Mr. Narula, the learned counsel appearing for the appellant, relying upon the judgment in the case reported as ***Madan Naik (dead by LRs.) and others vs. Mst. Hansubala Devi and Ors. AIR 1983 SC 676*** further contended that the abatement of a proceedings for want of substitution is automatic and no specific order for abatement is envisaged under one or the other provisions of Order XXII; the abatement takes place on its own force by the passage of time. In fact, a specific order is necessary under Order XXII Rule 9 of the Code of Civil Procedure for setting aside the abatement, which order is appealable, under Order XL Rule 1 (k) of the Code of Civil Procedure.

22. The learned counsel also pointed out that in the written statement filed on behalf of the defendants, a specific objection was taken by the defendants that the legal representatives of Mehmood Mian were necessary parties. In the cross examination of PW1 (plaintiff), the

learned counsel pointed out, PW1 had admitted that Mst. Anis Fatima, wife of Mehmood Mian, had signed the summons issued in the suit as Mehmood Mian was unable to move because of his hip bone fracture and because he was insane. Yet, the plaintiffs did not choose to implead her as a party, though Mst. Anis Fatima was alive till the year 1996.

23. Mr. S.K. Bhalla, the learned counsel appearing for the respondents, on the other hand, drew my attention to the order dated 25th May, 1988 passed on the application of the plaintiff under Order VII Rule 7; Order 1 Rule 10 and Order VI Rule 17 read with Section 151 of the Code of Civil Procedure and to the fact that no reply to the said application was filed by the defendants no. 1 to 3 objecting to the impleadment of the defendants no.2 and 3, despite opportunity having been granted to them for that purpose. My attention was also drawn by the learned counsel for the respondents to the fact that during the course of oral arguments, the Civil Judge had taken note of the contention of the defendants that the suit had already abated and to his findings rejecting the said contention, while at the same time affording liberty to the defendant no.1 to file an application in this regard.

24. Mr. Bhalla pointed out that subsequently, an application was filed under Section 151 of the Code of Civil Procedure by the defendant no.1 for dismissal of the suit as abated, to which a reply was filed by the plaintiffs. The said application was heard and dismissed by a speaking order dated 12th December, 1990 holding that the suit had not abated.

25. The learned counsel for the respondent submitted that consequent to the passing of the said order no appeal was filed by the defendant no.1 and as a matter of fact the learned Additional District Judge, Ms. I.K. Kochar, (as her Ladyship then was), while adjudicating upon the preliminary issue with regard to the maintainability of the suit framed on 21st September, 1992, made the following pertinent observations in the context of abatement in paragraph 17 of her order dated 4th July, 1995: -

“17. On the application of the respondent, arguments were re-heard on behalf of the respondent wherein it has been contended that since Mehmood Mian (defendant No.2 in the first suit) had died and his legal heirs not having been brought on record, the suit had abated and as such the present appeal is also not maintainable. On the perusal of the record of the Trial Court, it is clear that the Trial Court while allowing the amendment vide orders dated 25.5.1988 had recorded objections of defendant no.1 that as the original defendant No.2 has died, the entire suit stands abated. However, no finding was given on the said issue and liberty was given to defendant No.1 to move appropriate application in this regard. Vide orders dated 12.12.90, the trial court had disposed off the application of defendant No.1 for dismissal of suit on the ground that since one of the defendants had died and the plaintiff had also died and LRs of the deceased defendant and deceased plaintiff not having been brought on record, the present suit abates. In the said order dated 12.12.1990, Trial Court had considered at length the arguments of the defendant No.1 on this issue and held that the suit did not abate. No appeal had been filed by defendant no.1 against the said order which has since attained finality. As such there is no force in this argument of the respondent at this stage.”

26. After considering the rival submissions of the counsel for the parties on the aspect of abatement of the suit, I am of the view that the learned trial court was right in holding that no appeal having been filed

by the defendant no.1 against the order dated 12th December, 1990, the said order has since attained finality. It is also pertinent at this juncture to note that the defendants no.2 and 3 (the appellants herein) not only filed no reply to the application for their impleadment by striking off the name of Mehmood Mian from the record, but also accepted the costs imposed upon the plaintiffs as a result of the Court having allowed their impleadment. Furthermore, no appeal was filed by the defendants no.2 and 3 against the order dated 25th May, 1988 nor the defendants no.2 and 3 at any point of time, moved any application for dismissal of the suit as having abated. It does not lie in their mouth to contend, after taking their chances in the suit, that the suit had abated on account of the non-impleadment of the legal representatives of the deceased Mehmood Mian.

27. Apart from the above, I am even otherwise of the view that the suit could not be said to have abated for two reasons. First, on account of the fact that the plaintiffs were the joint owners of the property as was the defendant no.1. As held by the Supreme Court in the cases reported as *Mahabir Prasad vs. Jage Ram & Ors.* (1971) 3 SCR 301; *Santu vs. Raj Mal and Ors.* 1978 (2) RLR 443 (P&H); *Yethirajula Neelayya and another vs. Mudumuru Ramaswami and another* AIR 1973 Andhra Pradesh 58; *Ramnarain and another vs. Kishorelal* AIR 1964 Rajasthan 79 (V 51 C 25); *Mohammad Arif vs. Allah Rabbul Alamin and others* AIR 1982 SC 948 and *Padam Narain and another*

vs. G.C. Jain and others AIR 1984 (Delhi) 310 in the case of co-sharers, there is no abatement even if they are not brought on record. Second, the defendants no.2 and 3 being intermeddlers, must certainly be held to be “legal representatives” of the deceased Mehmood Mian, within the meaning of the expression “legal representative” as defined in Section 2(11) of the Code of Civil Procedure.

28. A look now at the relevant part of the definition of “legal representative” which reads as under: -

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context, -

(11) **“legal representative” means** a person who in law represents the estate of a deceased person, **and includes any person who intermeddles with the estate of the deceased** and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued....”

29. It is plain from a reading of Section 2(11) that the definition of the word “legal representative” is inclusive in character and its scope is wide. It consists of two distinct categories of legal representatives, who in law represent the estate of the deceased. The first category of legal representatives are those who are legal heirs of the deceased. At par with them and in a class by itself, are the persons who are “intermeddlers” with the estate of the deceased. This category may comprise of a local guardian in possession of the estate in the event of

the death of the minor, executors or administrators of a will and those in possession of the estate of the deceased in any capacity whatsoever.

30. In the case reported as *Sudama Devi and ors. Vs. Jogendra Choudhary and Ors. AIR 1987 Patna 239 (Full Bench)*, the Full Bench of the Patna High Court, while dealing with the questions of abatement of the appeal, held as follows:-

“10. It is plain from the above that the definition herein is a wide and inclusive one and conceives of two distinct categories. Firstly, the heirs or persons, who in law represent the estate of the deceased person. However, at par with them and in a class by itself is any person who intermeddles with the estate of the deceased. Such a person is equally a legal representative. **Now the phrase intermeddler with the estate has come to be a term of art and has been construed as one of the widest amplitude.** This apart, even the dictionary meaning of the word is one of considerable width. In Chambers's Twentieth Century Dictionary the word 'meddle' is given the meaning to "interfere unnecessarily, or, without being entitled". Intermeddle is "to meddle or to interfere improperly". In the New Oxford Illustrated Dictionary, 'meddle' means to concern one-self with what is not ones business. According to the Random House Dictionary 'intermeddler' means one who "interferes or intermeddles", which in turn means to "interfere officiously and unwantedly". It is thus manifest that even on its plain dictionary meaning the word is one of wide amplitude.

11. This word has also been the subject matter of considerable judicial scrutiny both in Indian and English laws. In *Mst. Naro v. Harbanslal AIR 1962 Punj 457* Tek Chand, J., speaking for the Division Bench, observed as under : --

"Intermeddling means to meddle with the affairs of others in which one has no concern, to meddle officious; to interpose or interfere improperly. It

signifies meddling with the property of another improperly. Intermeddling may take several forms including collecting or taking possession of the assets or other act, which might evince a legal control.

A legal person, who intermeddles, is on the same footing as an executor de son tort (executor of his own wrong) as he takes upon himself the office of an executor by intrusion and not so constituted by the testator. He is a person who without authority intermeddles with the estate of the deceased. Very slight act of intermeddling with the property of the deceased makes a person executor de son tort....

There is authority for the proposition that when a person intermeddles with the property of the deceased he is a legal representative of the deceased for the purposes of procedure to the extent of the property with which he has intermeddled...."

It would follow from the above that precedent has also authoritatively given to the word 'intermeddler' an extremely expanded construction. Indeed, as has been noticed above, an intermeddler is on the same footing as an executor de son tort. In the Halsbury's Laws of England, Fourth Edition, Vol. 17, in Para 754, it has been said as under with regard to an executor de son tort : --

"The slightest circumstance may make a person executor de son tort, if he intermeddles with the assets in such a way as to denote an assumption of the authority or an intention to exercise the functions of an executor or administrator. Demanding payment of debt due to the deceased, paying the deceased's debts, carrying on his business, or disposing of goods may make a person executor de son tort; but setting up a colourable title to the deceased's goods is not enough. A person who enters upon or collects the rents of a deceased person's leasehold property and pays the ground rent may, by reason of privity of estate or estoppel, render himself liable to the landlord upon the covenants of the lease as executor de son tort, but a person who takes over leasehold property from an executor de son tort does not."

12. It would be manifest from the above that an intermeddler (who is on the same footing as an executor de son tort in English law) is one who in any way whatsoever dabbles with or comes in touch with the estate of the deceased. The wide sweep of the phrase, as a term of art, and the intention of the legislature in expressly including an intermeddler in the definition of legal representatives under Section 2(11) of the Civil P.C. is thus not in doubt.

13. Now, once the width and sweep of the word intermeddler and the intent of the legislature in including it in Section 2(11) of the Code is manifested, it would seem somewhat elementary that a legal guardian in possession of the estate would, in the event of the death of the minor, come squarely within the ambit of an intermeddler with the estate in the eye of law, even if he himself does not happen to be a Class I heir thereto.”

31. In the case reported as *State Bank of India vs. Indian Apparel Industries and Ors. AIR 1989 Delhi 297*, a Single Judge of this Court Hon’ble Mr. Justice Y.K. Sabharwal (as his Lordship then was) laid down that, if there are more than one legal representatives, one in capacity as a legal heir and the other as an intermeddler, there is nothing in law to warrant the proposition that only the former category of legal representatives should be impleaded and not the latter category. The Court therein held as follows:

“The term "legal representative" is defined in section 2(11) of the Code of Civil Procedure and includes any person who intermeddles with the estate of the deceased besides a person who in law represents the estate of a deceased person. A bare reading of the definition of the word "legal representative" or the provisions of Order 22, rule 4, Code of Civil Procedure, do not place any restriction on the

impleading of any legal representative. With respect, I have not been able to understand what exactly the learned judges meant when they said "legal representative within the primary meaning of the word". Probably, they meant that when an heir under the succession law was in existence, a legal representative under section 2(11), Code of Civil Procedure, should not be impleaded and that appears to be the reason for observing that a widow would be the proper representative of the deceased man. I do not, however, find any such limitation in the Code of Civil Procedure or the Succession Act. If there are more than one legal representatives, one in the capacity of legal heir and other an intermeddler, in my opinion, there is nothing in law to warrant the proposition that only the former category of legal representatives should be impleaded and not the latter category.”

32. Thus, in my considered opinion, the learned Trial Court rightly held that the suit did not abate despite the death of Mehmood Mian during the pendency of the suit and non-impleadment of his wife after his death. It was rightly observed that the defendants had not led any evidence to show as to who were the legal representatives of the deceased Mehmood Mian, who were required to be substituted after his death. The suit property was in the possession of Mehmood Mian and during the pendency of the suit itself was transferred to defendants no.2 and 3. Mehmood Mian was one of the sons of Mohd. Mian and had equal undivided share in the said property. There was no requirement to implead his wife Mst. Anis Fatima in the suit as defendant because she had no right or title in the suit property nor she had dealt with it. There

was no allegation in the plaint against her. PW1 also admitted in his cross-examination that Mst. Anis Fatima never raised any objection regarding the sale of the property despite service of summons upon her and that was an additional ground for not bringing her on record. Moreover, PW1 stated in his statement that the wife of Mehmood Mian also died issue-less and as such the plaintiffs themselves represented the estate of the deceased Mehmood Mian, being the natural heirs and successors. The defendant no.1, the nephew of the deceased Mehmood Mian, was already on record and there was thus no occasion for the abatement of the suit.

33. Adverting next to issue no.4 which pertains to the validity of the Sale Deed dated 6th November, 1987, executed in favour of the defendants no.2 and 3, the learned counsel for the appellants contended that the plaintiffs had proceeded throughout on the basis that the plea of pre-emption was available to them. The said plea having been given up by the plaintiffs, there was no ground for challenging the sale deed executed on 6th November, 1987. Relying upon the decision of the Supreme Court in the case reported as *Seenivasan vs. Peter Jebaraja and Anr.(2008) 12 SCC 316*, the learned counsel contended that the deemed date of commencement of the bar to transfer a property *pendente lite* for a subsequently impleaded party, such as defendants no.2 and 3, would be governed by the principles of Order I Rule 10 (4)

and (5) of the Code of Civil Procedure i.e. from the date of service of summons on the newly impleaded defendants and not prior thereto.

34. The learned counsel for the respondents, on the other hand, contended that the order dated 30th October, 1987 directing the parties to maintain status quo in respect of the suit property was passed in the personal presence of the defendant no.1 as well as in the presence of Mst. Anis Fatima (wife of deceased defendant no.2, Mehmood Mian). Despite this *status quo* order of the Court, Mehmood Mian sold the suit property to the present defendants no.2 and 3 by way of a registered Sale Deed dated 6th November, 1987 in violation of the Court orders. The learned counsel contended that the law is well settled that the sale of a property in dispute before the Court shall be hit by the principles of *lis pendens* as enshrined in the provisions of Section 52 of the Transfer of Property Act and such a sale shall be null and void, even if the purchaser has purchased the disputed property in good faith, without knowledge of the litigation or the stay order.

35. Reference was also made by Mr. Bhalla to the following judgments in support of his contention that the sale of suit property after the filing of the suit is a nullity, even if there is no injunction: ***Sanjeev Narang vs. Prism Buildcon Pvt. Ltd. 154 (2008) DLT 508 (DB); Ravinder Singh and Anr. Vs. Naresh Kukreja and Anr. 160 (2009) DLT 350; Shanu Ram vs. Basheshar Nath & Ors. 1966 Punjab Law***

Reporter (Vol. LXVIII) 44, apart from relying on ***Joginder Singh Bedi vs. Sardar Singh Narang and Anr. 26 (1984) DLT 162.***

36. Distinguishing the judgment rendered by the Supreme Court in ***Seenivasan's case*** (supra), the learned counsel for the respondent contended that in the said case the property had already been sold in 1978, prior to the filing of the suit for specific performance against one Shahul Hameed in 1981, who also had already sold the said property to Saraswathi Ammal again, prior to the filing of the suit. In the present case, the sale was subsequent to the filing of the suit and that too in flagrant violation of the *status quo* orders granted by this Court.

37. After hearing the counsel for the parties, I am of the view that from the evidence adduced by the parties, as noted by the learned Trial Court, it is difficult to believe that the defendants were in possession of the suit property prior to 31st October, 1987. The defendants, in their written statement have not taken any such plea and this plea came up for the first time at the evidence stage and thus, the evidence led by the defendants no.2 and 3 was beyond pleadings. Even otherwise, the learned Trial court has found this plea unworthy of credence and I think rightly so, in view of the fact that though the plea of the defendants no.2 and 3 is that they were in possession of the first floor as tenants since July 1987, not a scrap of paper has been placed on record in this regard, including the rent receipts which must have been in their possession.

38. DW1 in his cross-examination stated that he had got ration card of the suit property on 16th September, 1987 and the water connection on 10th October, 1987, but again neither the ration card nor any proof of water connection has been brought on record. The statements of DW2 and DW3 to the effect that the defendants no.2 and 3 were in possession since July 1987 has also been found to be unworthy of credence in view of the fact that they did not know or remember a number of facts which ought to have been within their knowledge and recollection. They have, to my mind, been rightly termed as “introduced witnesses”.

39. In the case of *Surjit Singh & Ors. Vs. Harbans Singh and Ors. (1995) 6 SCC 50* the following apposite observations were made by the Supreme Court: -

“....When the court intends a particular state of affairs to exist while it is in seisin of a lis, the state of affairs is not only required to be maintained, but is 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. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. 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.....:

40. In the case of *Satyabrata Biswas vs. Kalyan Kumar Kisku JT 1994 (1) SC 325* the Supreme Court has held that a sublease granted in

contravention of *status quo* orders, during the pendency of the suit, shall be illegal and cannot be given effect.

41. The above being the legal position, in my considered opinion, viewed from any angle, the impugned judgment and decree do not suffer from any infirmity or error and must be upheld.

42. The appeal is accordingly held to be without any merit and is dismissed as such. All the pending applications stand disposed of.

**REVA KHETRAPAL
(JUDGE)**

April 20, 2010
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