

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 31.03.2011

+ **CS(OS) No. 2528/2008**

NITIN ARORA

.....Plaintiff

- versus -

YASHODA NAND SHARMA & OTHERS

....Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr Manish Vashisht and Mr Sameer Vashisht, Advs.

For the Defendant: Mr Yatish Mohan and Ms Pooja, Advs. for D 1 to 5
Mr Hem C. Vashisht, Adv. for Intervener Divya Guha

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

V.K. JAIN, J. (ORAL)

IA No. 12212/2010 (O.1 R.10 CPC)

1. This is an application filed by Smt. Divya Guha, daughter of Defendant No. 3 Manorma Sharma, for impleading her as a party to this suit. The admitted position is that Property No. K-1, Malviya Nagar, New Delhi was

owned by late Shri Pandit Krishan Datt, who died leaving five legal heirs behind, namely, Kuldev Prasad Sharma, Yashoda Nand Sharma, Baldev Prasad Sharma, Gopal Datt Sharma and Dr (Miss) Vijay Lakshmi. Yashoda Nand Sharma has been impleaded as defendant No. 4, whereas Dr (Miss) Vijay Lakshmi has been impleaded as defendant No. 5 in the suit. Shri Kuldev Prasad Sharma died on 30th March, 1989, leaving six legal heirs comprising his widow, two sons and three daughters. The children of late Shri Kuldev Prasad Sharma relinquished their share in the aforesaid property in favour of their mother Kanta Sharma vide registered relinquishment deed executed on 13th May, 2005. Shri Gopal Dutt Sharma died on 03rd May, 1991 leaving his widow, i.e. defendant No. 4 Prem Lata Sharma and two sons, namely, Ashwini Sharma and Deepak Sharma as his legal heirs. Ashwini Sharma and Deepak Sharma relinquished their share in the suit property in favour of their mother vide registered relinquishment deed executed on 16th May, 2005. Shri Baldev Prasad Sharma expired on 09th April, 2000 leaving four legal heirs behind him comprising his widow, Smt. Manorma Sharma, who has been impleaded as defendant No. 3 and three daughters,

namely, Bharti Sharma, Poonam Sharma, Divya Sharma. A relinquishment deed has been executed by Bharti Sharma on 16th May, 2005 on her behalf as well as on behalf of sisters Poonam Sharma and Divya Sharma, relinquishing the shares of all of them in the suit in favour of their mother Smt. Manorma Sharma.

2. The case of the applicant Divya Guha is that in January, 2005, her elder sister Bharti Sharma and defendant No. 1 approached her and told her that they had to get the mutation transferred in the name of surviving heads of the legal heirs of their grandfather and therefore she will have to execute a relinquishment deed only for the purpose of getting mutation and nothing else. It is further alleged that while getting the relinquishment deed executed, Bharti Sharma and defendant No. 1 promised that as and when the property is divided, she would get her share in it. It is further alleged that the applicant was assured by the defendant as also by her sister Bharti Sharma that they would neither enter into a sale transaction with any third party without her consent nor execute any document without her consent and permission. It is further alleged that on persistent request from the defendant, the applicant

and her sister Poonam Sharma executed a relinquishment deed in favour of their mother Smt. Manorma Sharma, for the particular purpose of mutation and nothing else.

3. Though the case, as setup in the application is that the applicant had executed a relinquishment deed in favour of her mother for the limited purpose of getting the mutation transferred, the documents filed by the parties show that in fact a special power of attorney was executed by the applicant Divya Guha and her sister Poonam Sharma in favour of their other sister Bharti Sharma specifically for the purpose of executing a relinquishment deed in favour of their mother Smt. Manorma Sharma on their behalf in the office of Sub-Registrar. On the strength of the special power of attorney executed in her favour, Bharti Sharma executed a relinquishment deed in favour of her mother Smt. Manorma Sharma.

4. Defendants 1 to 5, who at the relevant time, owned Property No. K-1, Malviya Nagar, New Delhi, entered into an agreement to sell the aforesaid property to the plaintiff for a consideration of Rs 1, 25,00,000/-and a part payment of Rs 50 lakhs is stated to have been made to them. Smt. Manorma Sharma received a sum of Rs 10 lakhs out of

which Rs 5 lakhs were paid vide cheque No. 315980 dated 08.01.2006 drawn on Syndicate Bank, New Delhi and Rs 5 lakhs is stated to have been paid cash to her.

5. Admittedly, the applicant Diva Guha is not an illiterate person, she being a graduate and her photograph also has been affixed on the special power of attorney executed by her and her sister Poonam Sharma in favour of Bharti Sharma. The special power of attorney was registered before the Sub-Registrar on 11th February, 2005. Since the applicant expressly authorized her sister Bharti Sharma to execute a relinquishment deed in favour of her mother Smt. Manorma Sharma and Bharti Sharma accordingly executed a relinquishment deed relinquishing the share of applicant as also her own share and the share of other sister Poonam Sharma in favour of their mother Smt. Manorma Sharma, it is only Manorma Sharma who became the owner of the share which her husband had in Property No. K-1, Malviya Nagar, New Delhi.

6. The applicant is not a party to the agreement to sell set up by the plaintiff. Her case for impleadment is based solely on the ground that she being one of the legal heirs of late Shri Baldev Raj has a share in the suit

property and, therefore, her mother could not have agreed to sell her share in the suit property to the plaintiff. The plea taken by the applicant is falsified from the registered documents executed by her. Even otherwise, I find nothing unnatural in the daughters relinquishing their share in the property of the father in favour of their mother. In fact, this has been done not only by the children of late Shri Baldev, but also by the children of Kuldev Prasad Sharma and Gopal Dutt Sharma.

7. As a general principle of law, the plaintiff being *dominus litis*, it is for him to choose the persons against whom he wants to litigate and ordinarily he cannot be compelled to implead a person against whom he did not seek any relief but, this general rule is subject to the provision of Order 1 Rule 10(2) of the CPC, which provides for impleadment of proper and necessary parties. This provision confers a power on the Court to direct to direct addition of a person, who ought to have been joined as a party to the suit but has not been joined, or a person, whose presence before the Court may be necessary in order to enable it to effectively and completely adjudicate upon and settle the questions involved in the suit as a party to

the suit. A person, who ought to have been joined as a party to the suit and in whose absence, no effective decree can be passed by the Court, is a necessary party whereas a person is a proper party though not a necessary party if his presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit even though no relief against him has been claimed in the suit.

8. In ***Kasturi v. Iyyamperumal and others, (2005) 6 SCC 733***, the appellant had filed a civil suit against respondent Nos. 2 and 3 for specific performance of contract, entered into between him and respondent Nos. 2 and 3. Respondent Nos. 1 and 4 to 11, who were not parties to the contract and were setting up a claim of independent title and possession over the contracted property filed an application to implead them as defendants. The trial Court allowed them to be added as parties and its decision was upheld by the High Court. Reversing the decision of the High Court, Supreme Court held that stranger to the contract namely respondent Nos. 1 and 4 to 11, who were making claims independent and adverse to the title of respondent Nos. 2 and 3 were neither necessary nor

proper parties and, therefore, were not entitled to join as party defendants to the suit for specific performance of contract for sale. The Supreme Court was of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. During the course of the judgment, Supreme Court, *inter alia*, observed as under:-

“11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all....

13.....They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In the case of *Anil Kumar Singh v. Shivrath Mishra*, (1995) 3 SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

“Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.” (emphasis supplied)

15....As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from

the suit for specific performance to a suit for title and possession which is not permissible in law.

15..... As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

In ***Bharat Karsondas Thakkar v. Kiran***

Construction Company, (2008) 13 SCC 658, the issue

before the Supreme Court was as to whether the appellant, who had acquired an independent right in the suit property by way of separate decree but was not a party to the agreement between respondent No.1 and M/s Modern Development Corporation could be added as a party in the suit for specific performance, which respondent No.1 had filed and whether the decree passed in his favour could be assailed by respondent No.1 in his suit for specific performance. The Division Bench of the High Court had allowed the amendment so as to implead the appellant as a party to the suit for specific performance, which respondent No.1 had filed. It had also allowed amendment of the prayer in the plaint so as to include declarations with respect to the decree, which had been passed in another suit and for damages. Supreme Court, relying upon its earlier decision in **Anil Kumar Singh v. Shivnath Mishra, (1995) 3 SCC 147**, held that respondent No.1 was not entitled to be joined as a party to the suit and he could file a separate suit to challenge the consent decree. During the course of the judgment, the Court, inter alia, observed as under:-

“28. Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether

a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title."

9. The learned counsel for the applicant has relied upon the decision of Supreme Court in the case of **Sumtibai and Ors. Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar W/o Parasmal Chordia (Dead) and Ors.** 2007 (10) SCC 82. In the case before Supreme Court, one Kapoor Chand had entered into an agreement to sell the suit property to the plaintiff Paras Finance Company stating therein that the property in dispute was his self-acquired property. During the pendency of the suit, Kapoor Chand died and his wife and sons were impleaded as his legal representatives. After their impleadment as legal representatives of late Shri Kapoor

Chand, they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC, seeking permission to file additional written statement and to take such plea as are available to them. The application having been rejected by the Trial Court and the Revision Petition having been dismissed by the High Court, the matter was taken to Supreme Court by way of Special Leave. A perusal of the judgment would show that in the registered sale deed dated 12th August, 1960, the shop which was subject matter of the agreement had been mentioned and the sale was shown in favour of Kapoor Chand and his sons Narainlal, Devilal and Pukhraj. Supreme Court noted that the registered sale deed itself showed that the purchaser was not Kapoor Chand alone but also his sons as co-owners. Prima facie, Supreme Court was of the view that sons of Kapoor Chand are also co-owners of property in dispute. During the course of arguments before Supreme Court, the learned counsel for the plaintiff/respondent placed reliance upon the earlier decision of Supreme Court in the case of **Kasturi** (supra). The Court was of the view that **Kasturi** (supra) was clearly distinguishable and it cannot be laid down as absolute principles that whenever the suit for specific performance is

filed by filed by A against B, a third party C can never be impleaded in that suit. It was observed that if C can show a fair semblance of title or interest he can certainly file an application for impleadment and he need not wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. The proposition of law which emerges from the above decision of Supreme Court is that though ordinarily, a person who has a stranger to an agreement to sell cannot be impleaded as a party to the suit against the wishes of the plaintiff, the Court may in the facts and circumstances of a particular case, may allow such a person to become a party to the suit if he is able to satisfy the Court that he has a subsisting title in the property, subject matter of the agreement.

However, in the present case, the applicant has not been able to show any title in her favour, she already having executed a special power of attorney authorizing her sister to execute relinquishment deed in favour of her mother and the sister in turn having already executed the relinquishment deed in favour of their mother. Thus, whereas in the case of **Sumtibai** (supra), Supreme Court

had found a prima facie case in favour of the sons of Kapoor Chand on account of their having been shown as purchaser in the sale deed, whereby the property subject matter of the agreement was purchased, in the case before this Court, the material available on record indicates otherwise and does not make out even a prima facie case in favour of the applicant.

10. In ***State of Orissa v. Sudhansu Sekhar Misra***, ***AIR 1968 SC 647***, Supreme Court, inter alia, observed as under:-

“there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. ”

In ***Bhavnagar University v. palitana Sugar Mill***

(P) Ltd., (2003) 2 SCC 111, Supreme Court, inter alia, observed as under:-

“It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

In **Bharat Petroleum Corporation Ltd. v. N.R.**

Vairamani, (2004) 8 SCC 579, Supreme Court, inter alia, observed as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

Since the facts of this case are altogether different from the facts of **Sumtibai** (supra), and prima facie the applicant was left with no right, title and interest in the suit

property on the date of agreement in favour of the plaintiff was executed, she is neither a necessary nor a proper party to the suit.

The application is therefore dismissed and stands disposed of.

It is made clear that the observations made in this order will not influence the decision of the suit which the applicant has filed and is stated to be pending in the District Courts.

IA No. 14814/2008

The learned counsel for the plaintiff states that either he will deposit the balance amount of Rs 3.75 crores by way of an FDR or furnish a bank guarantee of the aforesaid amount in the name of Registrar General of this Court within two weeks. The learned counsel for the defendants has no objection to the interim order being confirmed on this term. Hence, subject to the plaintiff complying with the aforesaid undertaking, the interim order dated 05th December, 2008 is confirmed during pendency of the suit.

IA No. 14318/2009

Reply to this application has already been filed on

23rd February, 2010.

List this application for disposal on 16th
September, 2011.

(V.K. JAIN)
JUDGE

MARCH 31, 2011
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