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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : July 23, 2013*

\+ FAO(OS) 287/2013

DINESH SAREEN AND ANR

..... Appellants

Through: Ms.Meena Kohli, Advocate.

versus

S NAVNEET SINGH ANAND AND ORS

..... Respondents

Through

AND

\+ FAO(OS) 288/2013

DINESH SAREEN AND ANR

..... Appellants

Through: Ms.Meena Kohli, Advocate.

versus

S NAVNEET SINGH AND ORS

..... Respondents

Through

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

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By:AMULYA

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PRATIBHA RANI, J. (Oral)

1. These appeals arise in the backdrop of the following facts:

2. CS(OS) No.1448/2012 was filed seeking specific performance of the Agreement to Sell dated 10.05.2008 claimed to have been executed by Shri M.L.Sareen in respect of his one-fourth undivided share in property No. A-33, Vishal Enclave, New Delhi which was agreed to be sold to the plaintiff for a consideration of Rs.2.25 crores.

3. CS(OS) No.1449/2012 was also filed by the same plaintiff seeking specific performance of the Agreement to Sell dated 02.10.2008 in respect of the one-fourth undivided share agreed to have been sold by the defendants in that suit in respect of property No.A-33, Vishal Enclave, New Delhi for a consideration of Rs.2.60 crores.

4. The undisputed facts are that property bearing No.A-33, Vishal Enclave, New Delhi was owned by four brothers, namely, (1) M.L.Sareen, (2) Satish Chander Sareen, (3) Ramesh Sareen and (4) Shyam Lal Sareen.

5. The Applicants are the legal heirs of late Shri Shyam Lal Sareen who are strangers to the Agreement to Sell in respect of which two suits for specific performance have been filed by the plaintiff. It is also the admitted position that the property is yet to be partitioned amongst its co-owners. The Applicants have claimed that a civil dispute in respect of their property is pending in Civil Court at Jammu wherein a restraint order has been passed restraining the alienation of the suit property and another suit has been filed in Delhi seeking partition by metes and bounds is also pending.

6. I.A.No.13060/2012 in CS(OS) No.1448/2012 and I.A.No.13072/2012 in CS(OS) No.1449/2012 were filed by the Applicants/Appellants on identical grounds praying for their impleadment in the suit claiming themselves to be necessary and proper parties in that suit.

7. The learned Single Judge dismissed the aforesaid two applications seeking impleadment of the Applicants for the reasons that the plaintiff being dominus litus cannot be compelled to implead a person against whom he has not claimed any relief. The learned Single Judge relied upon the decisions of the Supreme Court in (i) *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd and others AIR 2010 SC 3109;* (ii) *Kasturi vs. Iyyamperumal and others(2005) 6 SCC 733* and (iii) *Bharat Karsonda Thakkar vs. Kiran Construction Company (2008) 13 SCC 658* and for the reasons recorded in paragraph-5 of the impugned order, declined to implead the Applicants as defendants. Relevant extracts of paragraph-5 of the impugned order are quoted hereinunder:-

> *".....Therefore, it would be difficult to dispute that he had the right to sell or enter into an agreement to sell in respect of his undivided share in the aforesaid property. The pendency of the suit for partition by metes and bounds would not come in the way of a decree being passed in the present suit. Similarly, if there is an injunction against alienation of the suit property by the Court at Jammu, the implication of such an order would be considered at an appropriate stage, in the event of the suit being decreed and the injunction being still in force at that time. But, as far as the applicants are concerned, they are neither necessary nor proper party to the present suit."*

8. Review petitions seeking review of the impugned order dated 20.11.2012 were also dismissed by the learned Single Judge observing that there was no ground for review of the said order.

9. Aggrieved by the order passed by the learned Single Judge on the aforesaid applications under Order 1 Rule 10 CPC and on the review applications, these two appeals have been preferred by the Appellants.

10. We have heard the learned counsel for the Appellants.

11. Ms.Meena Kohli, learned counsel for the appellant submitted that the Appellants are necessary and proper parties as they are in possession of the property forming subject matter of the suit for specific performance. It has been further submitted by her that the restraint order is already in operation and the suit for partition is pending but all these facts have not been considered by the learned Single Judge. She urged that the learned Single Judge failed to take into account the fact that in respect of the suit property the matter is pending in a Civil Court at Jammu as well as before this Court and the rights of the Applicants are going to be adversely affected if they are not impleaded in the suits for specific performance, hence they may be ordered to be impleaded as party/defendants in the suit by setting aside the impugned order of the learned Single Judge.

12. The contentions raised by learned counsel for the Appellants are contrary to record for the reason that in para-5 of the impugned order, the learned Single Judge has considered these arguments as well as the effect of pending litigations.

13. In the present case, it is not in dispute that the Agreements to Sell pertain to the one-fourth undivided share each by the vendors. The Applicants are total strangers to both the contracts and in suits for specific performance of the Agreements to Sell, the legal position is well settled that they are neither necessary nor proper parties.

14. In *Ram Bilash Pandey & Ors. vs. Jai Narayan Gupta & Ors. AIR 1984 Pat 218*, a suit for specific performance of contract for sale was entered into by certain members of a joint Hindu family. When the suit for specific performance was filed, the other members of joint Hindu family sought impleadment in the suit claiming the suit property to be joint Hindu family property. The request for impleadment was declined observing that the other members of the joint Hindu family were neither necessary nor proper parties. While rejecting the prayer for impleadment, reliance was placed on the decision *Panne Khushali & Anr. vs. Jeewanlal Mathoo Khatik & Anr. AIR 1976 MP 148 (FB)* wherein it was held that the co-owners of the contracted property are neither necessary nor proper parties, thus not required to be impleaded in a suit for specific performance.

15. In *Vidhur Implex and Traders (P) Ltd. vs. Tosh Apartments (P) Ltd. (2012) 8 SCC 384*, the Supreme Court had the occasion to consider its earlier decisions on the subject. The principles governing the applications for impleadment culled out therefrom and laid down in paragraph-25 of the judgment, read as under:-

> *"Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:*
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> *1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.*
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> *2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.*

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment."

16. The above legal principles were reiterated by the Supreme Court in the case of *Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Others (2013) 5 Supreme Court Cases 397* and while examining the provisions of Order 1 Rule 10 CPC, it was observed as under:-

"27. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 which empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. Order 1 Rule 10 reads as under:

10. Suit in name of wrong Plaintiff.-

(1) Where a suit has been instituted in the name of the wrong person as Plaintiff or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake,

and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as Plaintiff upon such terms a the Court thinks just.

(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.

(3) No person shall be added as a Plaintiff suing without a next friend or as the next friend of a Plaintiff under any disability without his consent.

(4) Where Defendant added, plaint to be amended.-Where a Defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the Court thinks fit, on the original Defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as Defendant shall be deemed to have begun only on the service of the summons.

28. From the bare reading of the aforesaid provision, it is manifest that Sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is a either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.

29. Considering the aforesaid provisions, this Court in the case of ***Ramesh Hirachand Kundanmal*** *v.* ***Municipal Corporation of Greater Bombay and Ors.*** *1992 (2) SCC 524 held as under:*

It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions

involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a Defendant whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck and Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the Plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

17. Here the grievance of the Appellants is that they being legal heirs of co-owner late Shri Shyam Lal Sareen and in possession of the suit property, are necessary parties in a suit for specific performance. The contention is liable to be rejected in view of the decision of the Apex Court in *Anil Kumar Singh vs. Shivnath Mishra alias Gadasa Guru (1995) 3 SCC 147* wherein it was held as under:-

"9. Sub-rule (2) of Rule 10 of Order 1 says that "necessary parties are persons who ought to have been joined as a party to the suit, a necessity to the constitution of the proper suit without whom no relief or order can be passed". In order that a person may be considered a necessary party, defendant to the suit, the conditions precedent must be (1) that there must be a right to some relief against him in respect of the dispute involved in the suit; and (2) that his presence should be

necessary to enable the court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without her presence the dispute as to specific performance cannot be determined. Therefore, she is not a necessary party."

18. In view of the settled legal position, referred to above, we concur with the view of the learned Single Judge that the Appellants are neither necessary nor proper parties in a suit for specific performance of the agreements to sell dated 10.05.2008 and 02.10.2008. The appeals accordingly deserve to be dismissed and the same are hereby dismissed.

19. The Appellants have also impugned the order dated 01.02.2013 whereby the review petition Nos.33/2013 and 34/2013 were dismissed by the learned Single Judge.

20. An appeal against the order dismissing the review application is not maintainable. In this regard, reliance can be placed on *Basant Kharbanda vs. Punjab and Sind Bank 1997 1 AD (Delhi) 398* wherein it was held as under:-

"5. In Shanker Motiram Nale vs. Shilolsing Gannusing Rajput (1994) 2 SCC 753, an appeal was preferred against an order rejecting an application for review. Their Lordships held:

This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of Civil Procedure Code bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal."

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21. Resultantly, both the appeals are dismissed with no order as to costs.

(PRATIBHA RANI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 23, 2013
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