

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 5064 of 2022

Petitioner :- Ram Dheeraj And 3 Others

Respondent :- Vijay Kumar And 14 Others

Counsel for Petitioner :- Manju Singh

Hon'ble Alok Mathur,J.

1. Heard Ms. Manju Singh, learned counsel for petitioners.
2. Notices were issued to respondent Nos. 1 to 13 and as per office report dated 11.10.2023 service of notices have been deemed to be sufficient and despite service no Vakalatnama has been filed on behalf of respondents.
3. In the aforesaid circumstances, the Court is proceeding to the said matter finally after hearing learned counsel for petitioner.
4. By means of present writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 01.10.2019 passed by Civil Judge (Jr. Div.), F.T.C., Ambedkar Nagar thereby rejecting the application under Order 1 Rule 10 CPC as well as order dated 22.09.2022 passed by District Ambedkar Nagar in Civil Revision No. 44 of 2019 thereby dismissing the revision preferred by the petitioner and affirmed the order of the trial court dated 01.10.2019.
5. The facts in brief are that present dispute pertains to Plot No. 1270/0.744 Hec. situated at Gram Majhaura. Tehsil - Bhati, District - Ambedkarnagar which was sold by one Bindeshwari Prasad to Akshay Kumar, Vinay Kumar and Rajendra Prasad sons of Prabhakar for consideration of Rs. 5,00,000/- (Five Lakh) on 01.11.2002. A suit was filed by legal heirs of Bindeshwari Prasad before the civil Judge (Jr. Div.), Ambedkarnagar for cancellation of the sale deed executed by Bindeshwari Prasad in favour of Akshay Kumar, Vinay Kumar and Rajendra Prasad.
6. It has been submitted by learned counsel for petitioners that present petitioners i.e. Ram Dheeraj, Ram Bali, Raksha Ram and Bacha Ram sons of Shrinath had purchased the said property by means of a registered sale deed executed on 11.07.2005 from Akshay Kumar, Vinay Kumar and Rajendra Prasad for adequate consideration and the said sale deed was bonafide. It has also been submitted that petitioners being

subsequent purchasers were not aware of pendency of the suit proceedings at the behest of the legal heirs of Bindeshwari Prasad and since they came to know about filing of Original Suit NO. 1301/2002 they filed an application on 17.02.2006 under Order 1 rule 10 CPC for being impleaded as defendants in the said suit.

7. It has further been submitted that after execution of the sale deed on 11.07.2005, the possession was delivered to the petitioners who are in possession of the property since said date.

8. The application was strongly objected by private respondents.

9. The trial court was of the considered view that disputed property had been transferred in favour of the petitioners without obtaining leave of the court as required for under Section 52 of Transfer of Property Act and was of the view that the said alienation of the property would be hit by principle of lis pendens as provided under Section 52 of Transfer of Property Act. The court was of the further view that the petitioners/applicants claiming their right under a sale deed executed during pendency of the suit proceedings could not be given effect to and consequently rejected the application under Order 1 Rule 10 CPC.

10. The petitioners being aggrieved by the order of the trial court dated 01.10.2019 preferred a civil miscellaneous revision before the District Judge, Ambedkarnagar which was numbered as Revision NO. 44 of 2019. The revisional court affirmed the findings recorded by the trial court and was also of the view that considering the provisions of Section 52 of Transfer of Property Act, no legal effect to the said transfer could be given and accordingly dismissed the revision preferred by the petitioners.

11. Learned counsel for petitioners while assailing both the orders whereby the application under Order 1 Rule 10 CPC has been rejected has submitted that there is no doubt that the petitioners are necessary and proper parties in the suit proceedings having purchased the disputed property from the defendants. It has further been vehemently submitted that petitioners were not aware of the suit proceedings and once the disputed property has been sold to the petitioners by the defendants there would be left at mercy of the defendants to prosecute the said suit proceedings and now the defendants having no interest in the said property will not effectively defend the suit proceedings and their rights would be adversely

affected, accordingly he submits that there is no reason as to why the petitioners should not be impleaded as defendants in the suit proceedings and the order passed by the trial court and the appellate court require interference as they were arbitrary.

12. This Court has considered the arguments of the petitioners as well as perused the record.

13. In the present case, the suit was preferred by the original title holder of the said property i.e. Bindeshwari Prasad for cancellation of the sale deed dated 01.11.2002 against Akshay Kumar, Vinay Kumar and Rajendra Prasad, sons of Prabhakar. There is no doubt that during pendency of the aforesaid suit the disputed property was purchased by the petitioners by means of a registered sale deed on 11.07.2005 and according to the petitioners the possession of the disputed property was handed over to the petitioners on executed of the aforesaid sale deed.

17. When the petitioners came to know about pendency of the aforesaid suit they filed an application under Order 1 Rule 10 CPC on 17.02.2006 stating that they have become the owners of the said property and accordingly have substantial rights and hence should be made parties in the suit proceedings. The trial court had rejected the application considering the import of Section 52 of Transfer of Property Act and were of the view that principle of lis pendens would be led against the interest of the petitioners who had purchased the said property during pendnecy of the suit proceedings without taking leave of the court. The revisional court was also of the similar view while rejecting the application for impleadment preferred by the petitioners.

15. No doubt, according to principles and law laid down under Section 52 of Transfer of Property Act the subsequent purchaser would be bound by the decree passed by the trial court but the question as to whether the subsequent purchaser who has purchased the property during suit proceedings should be impleaded as a party or not has been duly considered by Hon'ble the Supreme Court in the case of **Amit Kumar Shaw and another Vs. Farida Khatoon and another, 2005 (23) LCD 1064**, in the said judgment Ho'nble Supreme Court held as under:-

"8. On a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.

9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or (2) When, without his presence, the questions in the suit cannot be completely decided.

10. The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

16. Hon'ble the Supreme Court in the case of **Nawab John and others Vs. V.N. Subramaniam, 2012 (30) LCD 1377**, in has held as under:-

"17. It is settled legal position that the effect of Section 52 is not to render transfers affected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be,

eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

"The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."[Sanjay Varma V. Mank Roy, AIR 2007 SC 1332, para 12]

18. Such being the scope of Section 52, two questions arise: whether a pendente lite purchaser (1) is entitled to be impleaded as a party to the suit; (2) once impleaded what are the grounds on which he is entitled to contest the suit.

19. This Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in Smt. Sala Bala Dassi Vs. Smt. Nirmala Sundari Dassi and another, AIR 1958 SC 394, that, "justice requires", a pendente lite purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendente lite, she would be bound by the decree against her vendor. There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a matter of right, to get impleaded in the suit, this Court in (2005) 11 SCC 403, held that :

"Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest

from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee 26endent elite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee 26endent elite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case." [Emphasis supplied] The preponderance of opinion of this Court is that a pendente lite purchaser's application for impleadment should normally be allowed or "considered liberally".

17. Hon'ble the Supreme Court in the case of **Thomson Press (India) Ltd. Vs. nanak Builders & Investors P. Ltd. & Ors., 2013 (5) SCC 397**, 2013 has held as under:-

" 38. The aforesaid question was considered by the Calcutta High Court in the case of Kafiladdin and others vs. Samiraddin and others, AIR 1931 Calcutta 67 where Lordship referred the English Law on this point and quoted one of the passage of the Book authored by Dart, on "Vendors and Purchasers" Edn.8, Vol.2, which reads as under :-

"Equity will enforce specific performance of the contract for sale against the vendor himself and against all persons claiming under him by a title arising subsequently to the contract except purchaser for valuable consideration who have paid their money and taken a conveyance without notice to the original contract." Discussing elaborately, the Court finally observed:-

"The statement of the law is exactly what is meant by the first two clauses of S.27, Specific Relief Act. It is not necessary to refer to the English cases in which decrees have been passed against both the contracting party and the subsequent purchaser. It is enough to mention some of them : Daniels v. Davison (2), Potters v. Sanders (3), Lightfoot v. Heron(4). The question did not pertinently arise in any reported case in India; but decrees in case of specific performance of contract have been passed in several cases in different forms. In Chunder Kanta Roy v. Krishna Sundar Roy (5) the decree passed against

the contracting party only was upheld. So it was in Kannan v. Krishan (6). In Himmatlal Motilal v. Basudeb(7) the decree passed against the contracting defendant and the subsequent purchaser was adopted. In Gangaram v. Laxman(9) the suit was by the subsequent purchaser and the decree was that he should convey the property to the person holding the prior agreement to sale. It would appear that the procedure adopted in passing decrees in such cases is not uniform. But it is proper that English procedure supported by the Specific Relief Act should be adopted. The apparent reasoning is that unless both the contracting party and the subsequent purchaser join in the conveyance it is possible that subsequently difficulties may arise with regard to the plaintiff's title."

39. The Supreme Court referred the aforementioned decision of the Calcutta High Court in the case of Durga Prasad and Another v. Deep Chand and others AIR (1954) SC 75, and finally held:-

"In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in – Kafiladdin v. Samiraddin, AIR 1931 Cal 67 (C) and appears to be the English practice. See Fry on Specific Performance, 6th Ed. Page 90, paragraph 207; also – 'Potter v. Sanders', (1846) 67 ER. We direct accordingly."

40. Again in the case of Ramesh Chandra v. Chunil Lal (1971) SC 1238, this Court referred their earlier decision and observed:-

"It is common ground that the plot in dispute has been transferred by the respondents and therefore the proper form of the decree would be the same as indicated at page 369 in Lala Durga Prasad v. Lala Deep Chand, 1954 SCR 360 = (AIR 1954 SC 75) viz., "to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff". We order accordingly. The decree of the courts below is hereby set aside and the appeal is allowed with costs in this court and the High Court."

18. Considering the judgments of Hon'ble the Supreme Court to the facts of the present case, it is noticed that entire suit property has been purchased by the petitioners by means of sale deed dated 11.07.2005 and even the possession has been taken by them. Considering that once the said property has been sold to the petitioners, the original defendants have been divested of the right of the property and would no longer interested in contesting the said suit. The defendant of title which in any case now vest to the petitioners.

19. In light of the above, this Court is of the considered view that petitioners are necessary and proper parties and in light of the aforesaid judgements should have been impleaded as parties in the suit proceedings and accordingly the orders impugned are set aside and the application under Order 1 Rule 10 CPC preferred by the petitioners is allowed. The suit proceedings shall proceed after making the petitioners as defendants in the said suit.

20. In view of aforesaid observations / directions, the writ petition stands **allowed**.

(Alok Mathur, J.)

Order Date :- 29.5.2024

Ravi/