

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATIONS NO. 282, 283, 284, 285, 286, 287, 288,
290, 291, 293, 294, 303, 304, 305, 306, 307, 308, 309, 310, 312,
313, 314, 315 and 316 OF 2014

IN

FIRST APPEAL NO. 294 OF 2003

MISC.CIVIL APPLICATIONS NO. 282, 284, 285, 286, 287, 288, 290,
291, 293, 294, 303, 304, 305, 306, 307, 308, 309, 310, 312, 313,
314, 315 and 316 OF 2014

Chandreshwar Bhutnath Devasthan,
 Parvat Paroda, with its office at Coto,
 Amona, Quepem, Goa.
 Represented by its Attorney,
 Rama Prabhu Dessai,
 son of P. Prabhu Dessai,
 major of age,
 resident of Quepem, Goa.

... Applicant/
 Orig. Appellant

Versus

1. Shri Krishnakant Keshav Parvotkar,
 3rd Floor, Samar Seth Co-operative
 Housing Society, Charkop-Khandiwali (W),
 Mumbai.
 deceased, through legal heirs:
 - 1(a) Shri Samir Krishnakant Parvatkar,
 Age-39 years, bachelor,
 Landlord.
 - 1(b) Shri Sachin Krishnakant Parvatkar,
 Age-39 years, married,
 Landlord,
 and his wife,
 - 1(c) Smt. Sunita Sachin Parvatkar,
 Age-32 years,
 All residing at 21/B, Bhagyoday CHS Ltd.,
 Gokhivare, Vasai, (E), Tal (Vasai),
 District Thane, Maharashtra.
2. Ramchandra Keshav Parvotkar,
 (since deceased through his
 legal representatives)

(a) Smt. Bhanu Maruti Pagi,
Daughter of deceased original Respondent No. 2,
Married, 42 years of age,

(b) Shri Maruti Pagi,
Husband of Respondent No. 2(a),
Married, 45 years of age,

Both residents of B Wing,
4th Floor,
Concord Co-operative Housing Society,
II Cross Lane, Lokhandwala Complex,
Andheri (W), Mumbai-53.

(c) Smt. Madhavi Culdip Chauhan,
Daughter of deceased original Respondent No. 2,
Married, age 35 years and

(d) Shri Culdip Chauhan,
Husband of Respondent No. 2(c),
Married, 38 years of age,

Both residents of B Wing,
4th Floor,
Concord Co-operative Housing Society,
II Cross Lane, Lokhandwala Complex,
Andheri (W), Mumbai-53.

(e) Smt. Shubhangui Sanjay Vaidhya,
Daughter of deceased,
Married, 43 years of age and

(f) Shri Sanjay Vaidhya,
Husband of Respondent No. (e),
Married, 39 years of age,

Both residents of House No. 373,
Mapla Mahal,
J.S.S. Road, Girgaum,
Mumbai-400 044.

... Respondents

MISC.CIVIL APPLICATION NO. 283 of 2014

Chandreshwar Bhutnath Devasthan,
Parvat Paroda, with its office at Coto,
Amona, Quepem, Goa.
Represented by its Attorney,
Shri Samir J. Gauns Dessai,

Son of J. Gauns Dessai,
Major of age, resident of
H. No. 292/3, Camonsai, Xeldem,
Quepem, Goa.

... Applicant/
Orig. Appellant

Versus

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Housing Society, Charkop-Khandiwali (W),
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Age-39 years, bachelor,
Landlord.
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Both residents of House No. 373,
Mapla Mahal,
J.S.S. Road, Girgaum,
Mumbai-400 044.

... Respondents

Mr. Sudesh Usgaonkar with Ms. R. Periera, Advocates for the applicant in all the applications.

Mr. Sandesh Padiyar with Mr. S. Bhangui, Advocates for the respondents in all the applications.

Coram :- U. V. Bakre, J.

Date : - 10th February, 2015.

ORDER

Heard Mr. Usgaonkar, learned Counsel for the applicant and
Mr. Padiyar, learned Counsel for the respondents.

2. This common order shall dispose of all the above applications since they involve common question of fact and law.

3. The original respondent no. 1 and respondents no. 2(a) to 2(f) were parties no. 1 and 2(a) to 2(f) and the applicant was the party no. 3 in Land Acquisition Case No. 46/1990. The respondents no. 1(a) to 1(c) are the legal representatives of deceased respondent no. 1. Parties shall hereinafter be referred to as per their status in the said Land acquisition case.

4. The said Land Acquisition Case was a reference under Section 30 of the Land Acquisition Act, 1894 (L. A. Act, for short). Land was acquired for laying of the pipeline and service road for the 160 MLD, Salaulim Water Supply Project from Ambaulim to Paroda and an area of 5500 square metres of land was acquired from survey holding No. 78/2(part) for which an amount of ₹ 64,048/- was awarded as compensation. There was dispute in respect of apportionment of the said compensation between the parties no. 1 and 2, who are brothers on one side and the party no. 3, Devasthan, on the other side. By judgment and award dated 08/08/2003, the learned Reference Court held that the parties no. 1 and 2 are entitled to receive the said entire compensation along with accrued interest. Aggrieved by the said judgment and award, the party no. 3 has filed First Appeal No. 294/2003.

5. In the said First Appeal No. 294/2003, all the above applications have been filed by the appellant i.e. party no. 3 for

impleadment of persons named in paragraph 5 of M.C.A. Nos. 282, 283, 284, 285 and 316 of 2014 and in paragraph 7 of all the remaining M.C.A.s. It is alleged by the party no. 3 that by deed of sale, the details of which are mentioned in paragraph 3 of all the applications, the persons from parties no 1 and 2, as named therein, have sold part of the property denominated as "GHORBAT", bearing survey No. 78/2 to various persons, named in the same paragraph and who are sought to be added as parties. The persons from parties no. 1 and 2, who are the vendors of the sale deeds, were allotted plots from the said survey holding No. 78/2 in Inventory Proceedings no. 23/10/A(new). It is stated in the application that indisputably, the property, which is subject matter of the First Appeal No. 294/2003 and the property sold to the purchasers is one and the same. It is further stated that since the said transaction has been made by the parties no. 1 and 2 during pendency of the First Appeal instituted by the party no. 3, the said purchasers are necessary and proper parties and, therefore, should be impleaded as party respondents in the said First Appeal so that any order passed in the First Appeal should be binding on the said purchasers. The copies of the sale deeds have been produced along with the applications.

6. Mr. Usgaonkar, learned Counsel for the party no. 3 invited my attention to the judgment and award dated 08/08/2003 passed in Land Acquisition Case No. 46/1990 wherein the learned Reference

Court has held that parties no. 1 and 2 have proved that they are the owners in possession of survey No. 78/2 from which an area of 5500 square metres was acquired by the Government for laying the pipeline. It has been held that survey holding no. 78/2 is the property of parties no. 1 and 2 and, therefore, they are entitled to receive the compensation awarded by the Land Acquisition Officer. Learned Counsel submitted that the Reference Court has decided title in the matter. Learned Counsel submitted that the plots which have been sold to the purchasers, named in the present applications, by the parties no. 1 and 2 are from the unacquired area of same survey no. 78/2. He urged that the parties, who are sought to be added, are not claiming any right to the said property independently but they are claiming their right through the parties no. 1 and 2. He also read out the provisions of Section 52 of the Transfer of Property Act, (T. P. Act) and the provisions of Order XXII, Rule 10 of Code of Civil Procedure (C.P.C.) and submitted that in order to avoid multiplicity of proceedings, the said parties are required to be added. Learned Counsel relied upon the following judgments :

(i) ***T. G. Ashokkumar Vs. Govindammal and another,***
reported in [(2010)14 SCC 370]

(ii) ***Sri Jagannath Mahaprabhu Vs. Pravat Chandra Chatterjee and others,*** reported in [AIR 1992 ORISSA 47]

7. On the other hand, Mr. Padiyar, learned Counsel for the parties no. 1 and 2 submitted that all the above applications impleadment of parties are filed in a reference under Section 30 of the L. A. Act. He submitted that the question whether the said parties sought to be added have independent right or whether they are claiming right through the parties no. 1 and 2, does not arise. He submitted that the Land Acquisition Officer has made reference with regard to the apportionment of compensation in respect of the portion admeasuring 5500 square metres from survey no. 78/2 and, therefore, it is only this acquired portion and compensation thereof is subject matter of the said reference. Learned Counsel submitted that admittedly insofar as the said acquired land is concerned, it is only the respondents, who were interested parties and the persons now sought to be added as parties, neither had nor have any interest in the said acquired land. He submitted that the question whether parties can be impleaded in a reference under Section 30 of the L. A. Act is well settled. He submitted that parties cannot be impleaded in such cases. According to him, reference under Section 30 of L. A. Act is not strictly a title suit and even a person, who is not an owner, can be entitled to compensation. Learned Counsel relied upon the following citations :

- (i) *Ram Prakash Agarwal and Another Vs. Gopi Krishan (dead through Lrs.) and others*, reported in [(2013)11 SCC 296]

- (ii) *Govind S. P. Dessai and others Vs. Tukaram Parkar and Ors*, reported in [2013 Law Suit (Bom) 516]
- (iii) *Govind Narayan Lotlikar Vs. Savitribai Roghuvira Lotlikar*, reported in [1986 Law Suit (Bom) 149]
- (iv) *Machindra s/o Santaram Kutwad Vs. Sharad s/o Khanderao Survase and Ors*, reported in [2012 Law Suit (Bom) 854]
- (v) Judgment of this Court dated 14/10/2014 in F.A. No. 183/2006 (*Comunidade of Quitol Vs. The Fabrica of Betul Church, Betul, Quepem, Goa*)

8. I have gone through the material on record in the light of the arguments advanced by the learned Counsel for the parties. I have also gone through the judgments relied upon by the parties.

9. Section 30 of L. A. Act provides as under :

“30. Dispute as to apportionment - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”

10. From the above it can be understood that there are two type of disputes which are to be decided under Section 30 of the L. A. Act. One is the dispute as to apportionment of compensation

amount amongst the parties and the other is as to the persons to whom the same or any part thereof is payable. It is true that in the present matter, the dispute is as to which of the parties is entitled to receive the compensation whether it is the parties no. 1 and 2 or whether it is the party no. 3. The issue framed by the Reference Court was not whether any of the parties was owner of the property from which land was acquired. The issue framed was as to which of the parties the compensation awarded by the L.A.O. is to be apportioned. The learned Reference Court has held that the compensation is to be apportioned to the parties no. 1 and 2 equally. However, while holding as above, the learned Reference Court has further, incidentally, held that the parties no. 1 and 2 are the owners in possession of survey no. 78/2, in which lies the acquired land. The remaining unacquired part of survey no. 78/2 was not at all subject matter of the said Land Acquisition Case. Though the learned Reference Court has made observation that parties no. 1 and 2 are owners of survey no. 78/2, the said finding is restricted only for the purpose of deciding the reference under Section 30 of the L. A. Act, in respect of the acquired land and the said findings cannot affect any claim of the party no. 3 with regard to the remaining portion of the property based on their alleged title to the same. If in the First Appeal No. 294/2003, the party no. 3 succeeds in proving its case, the impugned judgment and order will be set aside and will not exist. But the persons who have purchased the portions of unacquired land and taken possession

of the same will not automatically get evicted by merely winning in the First Appeal. For the party no. 3 as well as for the parties no. 1 and 2, to succeed in the appeal, the presence of the persons sought to be added to the First Appeal, is not at all required. In such circumstances, the question of adding persons, who have purchased portions of the unacquired land from survey no. 78/2, after the judgment and Award passed in Land Acquisition Case No. 46/1990, does not arise as they are not at all necessary parties to the First Appeal. If the party no. 3 loses in First Appeal No. 294/2003, it cannot make any grievance regarding the said purchasers. Looking at the matter in this manner, it can be certainly said that said persons are neither necessary nor proper parties. Be that as it may, the present First Appeal arises out of the judgment and award passed in a Reference under Section 30 of the L. A. Act.

11. In the case of *“Ram Prakash Agarwal and another”* (supra), the Hon'ble Supreme Court has held that the application under Order IX, Rule 13 of C.P.C. cannot be filed by a person, who was not initially a party to the Land Acquisition Proceedings. It has been held that the Reference Court does not have the jurisdiction to entertain any application of *pro interesse suo*, or in the nature thereof. It has been further held that a person, who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or 30 of the L. A. Act, cannot get

himself impleaded directly before the Reference Court. It has been further held that in the event any other person has withdrawn the amount of compensation, the person interested, if so, aggrieved, has a right to file a suit for the recovery of his share.

12. In the case of *“Govind Narayan Lotlikar”* (supra), the question was whether the District Court in a reference under Section 30 of the L. A. Act can implead persons, who claim to be entitled to the compensation awarded in Land Acquisition Proceedings or to part thereof, or to claim to be interested in the acquired property when the same persons were not parties before the Collector. This Court has answered the said question in the negative. It has been held that the above is not permissible since the jurisdiction of the District Court in a reference under the provisions of Land Acquisition Case is restricted to the precise terms of the reference and such impleading would amount to enlargement of the terms of the reference and as such, the District Court would act without jurisdiction or in excess of jurisdiction, if it so orders.

13. In the case of *“Machindra s/o of Santaram Kutwad”* (supra), the learned Single Judge of this Court relying upon the judgment in the matter of *“Govind Narayan Lotlikar”* (supra) has held that the order passed by the trial Court permitting impleadment of the third party applicant as claimant, is otherwise erroneous and liable to be quashed and set aside since he had not raised any dispute before

the Collector as contemplated under Section 30 of the L. A. Act.

14. In the case of *“Govind S. P. Dessai and others”* (supra), I have myself held that a person, who was not a party to the land acquisition proceedings before the L.A.O. regarding any plot, would not be entitled to any compensation.

15. Section 52 of the Transfer of Property Act provides 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 immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt 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. Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by

reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

16. Order XXII, Rule 10 of C.P.C. Provides as under

Procedure in case of assignment before final order in suit.- (1) *In other cases of an assignment, creation or devolution of any interest during the pendency of a Suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) *The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).*

17. For the application of Section 52 of the T.P. Act, the subject matter of the suit or proceeding has to be transferred by any party to the suit or proceeding during the pendency of the same and for the application of Order XXII, Rule 10 of C.P.C., there has to be an assignment, creation or devolution of any interest, of the subject matter of the suit, during the pendency of a Suit. In the present matter, the acquired land which was the subject matter of the Land Acquisition Case No. 46/1990 has not been sold, transferred, or assigned by any of the parties to any third party. There is no devolution nor creation of third party interest in the same. Even otherwise, once a judgment is duly passed by competent Court in regard to subject matter of the suit in which the doctrine of *lis*

pendens applies that decision is *res judicata* and binds not only the parties thereto but also the transferees pendente lite from them.

18. In the case of *"T. G. Ashok Kumar"* (supra), the property which was subject matter of the partition suit was sold by the co-owner during the pendency of the said partition suit filed by other co-owner. The Hon'ble Supreme Court held that the sale pendente lite was not void, but shall be subject to decree in partition suit. It has been held that the title of vendee would depend upon decision in pending suit in regard to the title of vendor and if it is decided in partition suit that the vendor has title only in respect of a part of the property, vendee's title would be saved only to that extent and sale to that extent would be valid and binding, but sale of remaining portion which fell to the share of the plaintiff co-owner by virtue of decision of partition suit, would be ineffective. In the present matter, admittedly, the land which was subject matter of Land Acquisition Case No. 46/1990, has not been sold. Admittedly, what has been sold is out of the unacquired land. The persons, who are sought to be added to the First Appeal, have no interest of whatsoever nature in the acquired land and, therefore, they cannot, in any way, assist this Court in disposal of the said First Appeal in which the issue is strictly between the party no. 3 on one side and parties no. 1 and 2 on the other.

19. In the case of *"Sri Jagannath Mahaprabhu "* (supra), a Full

Bench of the Orissa High Court has held thus :

"7. The effect of Section 52, therefore, is that a lis pendens transferee is bound by the decree whether on contest, ex parte or on compromise. The plaintiff is under no obligation to implead a lis pendens transferee. We do not agree with the view expressed by the Full Bench of the Kerala High Court in Lakshmanan v. Kamal (AIR 1959 Kerala 67) (supra) that "the effect of Section 52 is to render void as against the decree-holder transfer or other dealing with the suit property pendente lite and he is entitled to ignore it" because Section 52 has been enacted with a view to safeguarding the interest of the plaintiff so that his decree is not defeated at the instance of a third party in whose favour there has been a lis pendens transfer. Our view is fortified by a decision of the Supreme Court in Nagubai Ammal V. B. Shama Rao, AIR1956 SC 593. It has been observed (at p. 602 of AIR):

"..... That sale was no doubt pendente lite, but the effect of S. 52 is not to wipe it out altogether but to subordinate it to the rights based on the decree in the suit. As between the parties to the transaction, however, it was perfectly valid, and operated to vest the title of the transferor in the transferee. . . ."

The contention that the words "the property cannot be transferred" in Section 52 rendered a transfer which fell within the mischief of Section 52 non est was repelled with the following observation (at p. 602 of AIR):

"This contention gives no effect to the words "so as

to affect the rights of any other party thereto under any decree or order which may be made therein", which make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto."

And it was observed (at p. 602 of AIR):

".....We are, therefore, unable to accede to the contention of the appellants that a transferor pendente lite must, for purposes of Section 52, be treated as still retaining title to the properties."

8. We hope, the aforesaid discussion would have made it clear that 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. That is the reason why G. K. Misra, J. (as he then was) observed that Order 22, Rule 10(1) enabled the transferee to continue the suit with the leave of the Court and though there was no bar operating against the transferor continuing the suit for the benefit of the transferee, Order 22, Rule 10 was an alternative procedure which safeguarded against the danger that the original plaintiff being no longer interested in the proceedings might not vigorously prosecute the same or might even collude with the adversary and B. K. Ray, J. concurred with the aforesaid view in Rusi Behera's case (1976 (42)

Cut LT 330) (supra). Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order 22, Rule 10 an alienee pendente lite may be joined as party. The plaintiff is not bound to make him a party. But 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 (See Mulla Transfer of Property Act, seventh edition, page 253). Rule 10(1) of Order 22, reads as under:

" 10. Procedure in case of a assignment before final order in suit.

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved."

Reference may be made to a decision of the Full Bench in Chacko Pyli v. Iype Varghese, AIR 1956 Trav-Co 147.

10. *Assuming that he is not a proper party, he may be impleaded as an assignee under the provisions of Order 22, Rule 10(1). Even if an application has been filed under Order 1, Rule 10, labelling of the application being misconceived, the court should ignore the labelling of the application as one under Order 1, Rule 10 and treat the same as one filed under Order 22, Rule 10(1), C.P.C., if the ingredients thereof are satisfied. This aspect of the law was not brought to the notice of the Division Bench which decided Pranakrushna's case (AIR 1989 Orissa 148)*

(supra) and rejected the application of the pendente lite transferee solely upon a consideration of the principles embodied in Order 1, Rule 10, CPC.”

20. In my view, the judgment of the Full Bench of Orissa High Court as above is not at all applicable to the present appeal which arises out of the judgment and award in reference under Section 30 of the L. A. Act. In the case of **“Sri Jagannath Mahaprabhu”** (supra), the purchasers pendente lite had filed application for their impleadment and the entire property, which was subject matter of the suit, was included in the said purchase.

21. In all the above circumstances, I am of the view that the persons named in all the above applications are not at all necessary or even proper parties to be impleaded in First Appeal No. 294/2003.

22. In the result, therefore, all the applications for impleadment are rejected. No order as to costs in the facts and circumstances of the case.

U. V. BAKRE, J.

SMA