

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

% Judgment Reserved on: 15th September, 2015
Judgment Delivered on: 01st October, 2015

+ FAO(OS) 514/2015

MEHAR CHAND SHARMA Appellant

versus

MANJEET SINGH KOHLI & ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Bahl with Mr Ajay Bahl
For the Respondents : Mr S.K.Sharma with Mr L.S.Solanki, Mr Priyank
Atri, Mr Prayas Anja and Mr Archit Vasudeva.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The present appeal arises out of order dated 06.08.2015 passed by a learned Single Judge in a Chamber Appeal being OA No.294/2015 in CS(OS) No.872/2010, arising out of the order dated 15.07.2015 passed by the Joint Registrar dismissing the application filed by the appellant seeking impleadment in the subject suit being I.A. No.15615/2012 under Order 1 rule 10 of Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC').

2. The question that arises for consideration is whether the appellant is a necessary or a proper party and thus entitled to be impleaded in the suit.

3. The respondent No.1 filed the subject Suit against respondent Nos. 2 to 10 seeking specific performance of Agreement to Sell dated 07.06.2004 in respect of land comprised in khasra Nos.1531(14-03), 1534 (12-13), 1539 (06-01) and 1949 (21-12), total measuring 54 bighas and 18 biswas, situated at Aliganj, Nehru Nagar, Lajpat Nagar.

4. During the pendency of said suit, the subject application for impleadment being IA No.15615/2012 was filed by the appellant contending that the grandfather of the appellant was the owner of the property as per the revenue records till 1929. He further contended that his grandfather never sold the property and by way of succession, he has become an owner of the property. He disputes the title of respondent Nos.2 to 10 and contends that the specific performance of Agreement dated 07.06.2004 cannot be granted.

5. The application filed by the appellant was dismissed by the Joint Registrar by the order dated 15.07.2015 holding that the appellant was neither a necessary nor a proper party to this suit and as such could not be impleaded. The said order dated 15.07.2015 dismissing the application has been confirmed by the learned Single

Judge by the impugned order dated 06.08.2015.

6. For the purposes of determining whether the appellant is a necessary or a proper party, the provision of Order I Rule 10 (2) CPC needs to be adverted to. Order I Rule 10 (2) is as under:-

“Order I Rule 10 CPC

10. (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.

7. The precondition for exercise of powers by a court under Order I Rule 10 (2) CPC to add a party to a Suit is (i) the person ought to have been joined; and (ii) the presence of such a party is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The persons who ought to have been joined are necessary parties and the persons whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the

suit are proper parties.

8. The subject suit has been, filed by respondent No.1 against respondent Nos. 2 to 9, for specific performance of an Agreement to Sell allegedly executed between respondent No. 1 and respondents 2 to 9. The appellant is claiming a title independent to the title claimed by respondent Nos. 2 to 9. Neither the appellant nor any predecessor of the appellant is stated to be a signatory or a party to the Agreement to Sell or claiming through or under any party to the agreement. The appellant is thus not a necessary party.

9. In a suit for specific performance of an Agreement, the Court has to adjudicate upon and settle all the questions involved between the parties to the agreement or parties claiming any right or interest through or under the parties to the Agreement. The *lis* in a suit for the specific performance is a *lis* arising out of a contract i.e. the subject Agreement. The questions to be settled by the Court are questions revolving around the Agreement. The presence of a stranger to the Agreement would not, in any manner, facilitate or enable the Court in adjudicating upon and settling the questions pertaining to the Agreement.

10. The parties that are neither signatory nor claiming any title through or under parties that are signatory to the Agreement would not assist the Court in effectually and completely adjudicating upon or

settling all the questions involved in the suit. On the other hand, impleadment of parties that are not connected with the Agreement would lead to enlarging the scope of enquiry required to be conducted by the Court for the purposes of adjudicating upon and settling the questions involved in the suit.

11. In this view of the matter, since the appellant is neither a signatory to the Agreement nor claiming any right, title or interest under/through any person, who is signatory to the Agreement, the appellant is neither a necessary nor a proper party to enable with Court to effectually and completely adjudicate upon and settle all questions in the suit.

12. The plaintiff is the *dominus litis*. It is for the plaintiff to choose against whom the plaintiff wishes to litigate. The plaintiff cannot be forced to litigate against a party against whom he seeks no relief. If the plaintiff omits to sue or litigate against the party whose presence is necessary or in absence of whom the decree cannot be executed, the plaintiff does so at its own risk and peril.

13. Under Section 19 of the Specific Relief Act, 1963, specific performance of a contract may be enforced against five categories of persons mentioned in the said Section i.e.:

(a) either party thereto;

(b) any other person claiming under him by a title

arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

14. The appellant does not fit in any of the above five categories. Since, the specific performance of the Contract can only be enforced against the five categories of persons mentioned in Section 19 and the appellant does not fit in any of the five categories, the decree, if any, in the subject suit would not impinge upon or affect the rights of the appellant that are claimed independent of the Agreement to Sell.

15. By impleadment of the appellant, the very nature and character of the suit would change. The scope would enlarge from an enquiry revolving around the agreement between the parties to an adjudication

of the title dispute between the appellant on the one hand and respondent Nos.2 to 10 on the other. Instead of assisting the Court in effectually and completely adjudicating upon the disputes arising in the suit, the same would make the Court embark upon a completely new and different type of enquiry. That is not the scope of impleadment under Order I Rule 10 CPC.

16. Learned Counsel for the appellant relied upon the decision of the Supreme Court in **Sumtibai & Ors. Vs. Paras Finance Co. Regd. (2007) 10 SCC 82** to contend that a third party to a contract can be impleaded to suit for specific performance, if he can show a fair semblance of title or interest.

17. The decision in the case of **Sumtibai (supra)** is not applicable in the facts of the present case. In the said judgment, the Supreme Court was concerned with the right of a legal heir impleaded in a suit for specific performance to file a written statement under order 22 rule 4(2). It was in the context of explaining the decision of the Supreme Court in **Kasturi Vs. Iyyamperumal and Others (2005) 6 Supreme Court Cases 733** that the supreme court observed that it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. The Supreme Court was not dealing with a case of a specific

performance of contract wherein the applicant was claiming title independent to parties to the agreement.

18. Further the supreme court in the case of **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417** while dealing with an argument of a conflict between the decisions in **Kasturi (Supra)** and **Sumtibai (Supra)** held as under:

“18. In Kasturi, this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

19. Referring to suits for specific performance, this Court in Kasturi, held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-

matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

20. The first respondent contended that *Kasturi* held that a person claiming a title adverse to the title of defendant vendor, could not be impleaded, but the effect of *Sumtibai* would be that such a person could be impleaded; and that therefore, the decision in *Sumtibai* is contrary to the larger Bench decision in *Kasturi*.

21. On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in *Sumtibai* itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision

and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay* [(1992) 2 SCC 524] and *Anil Kumar Singh v. Shivnath Mishra* [(1995) 3 SCC 147] also explain in what circumstances persons may be added as parties.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to

reason and fair play and not according to whims and caprice.

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26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in Kasturi [(2005) 6 SCC 733] and Sumtibai [(2007) 10 SCC 82] are with reference to the facts and circumstances of the respective cases. In Kasturi [(2005) 6 SCC 733] this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In Sumtibai [(2007) 10 SCC 82] this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai [(2007) 10 SCC 82] did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi [(2005) 6 SCC 733] lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.”

19. The claim of the appellant is that the appellant has an independent title to the property in suit. In case the appellant has an independent title, the appellant would have to establish the said title in

independent proceedings. It has been informed to us that the appellant has already filed a suit being CS(OS) No.3526/2012. The right, title of the appellant, if any, to the subject suit property would be decided in the said suit. The contention of the respondents is that the suit is not maintainable and is highly belated. Neither are we concerned with the suit filed by the appellant nor are we expressing any opinion on the maintainability or otherwise of the said suit. The reference to the suit is made only to note that the appellant has already instituted independent proceedings.

20. In view of the above, we do not find any infirmity in the order dated 16.08.2015, of the learned single judge, dismissing the appeal of the appellant against order of the joint registrar dated 15.07.2015 whereby the application of the appellant for impleadment has been dismissed. The appeal is dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

October 01, 2015
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