

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3902 of 2013

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ORDER:

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This civil revision petition under Article 227 of the Constitution of India by the petitioners/proposed defendants 6 to 8/3rd parties to the suit is directed against the orders dated 07.06.2013 of the learned Judge, Family Court-cum-VI Additional District Judge, Kadapa passed in IA.no.89 of 2013 in OS.no.33 of 2012 filed under Order I Rule 10(2) of the Code of Civil Procedure, 1908 ('the Code', for brevity) for their impleadment as defendants 6 to 8 in the suit.

2. I have heard the submissions of the learned counsel for the revision petitioners/proposed defendants ('the proposed defendants', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff, for brevity). The other respondents are defendants 1 to 5. I have perused the material record.

3. The case of the proposed defendants is this: "They had purchased the item no.1 of the suit schedule property from the 3rd defendant on 31.07.2012 for a valuable consideration under a regular registered sale deed and that the 3rd defendant had delivered possession of the same to them and that they are in possession of the property. The 3rd proposed party has in fact purchased a part of the property in item no.3, that is, an extent of Ac.0.02 cents and 431 Square links. The 1st proposed party and 2nd proposed party had purchased Ac.0.02 cents and 397 Square links. All the three proposed parties are in joint possession and enjoyment of the entire item no.3 of the suit schedule property. Prior to the said purchases, they and one S.A. Jaleel had entered into an agreement of sale for a consideration of Rs.11,60,000/- per cent with the 3rd defendant. The 3rd defendant had executed an agreement of sale in favour of S.A. Jaleel on 10.02.2012. On 03.03.2012, the proposed

defendants had verified all the documents of the 3rd defendant and also of the 2nd defendant and had entered into an agreement of sale; and on 31.07.2012 and 30.07.2012 the 3rd defendant had directly executed registered sale deeds in favour of the proposed defendants 6 to 8 *vide* documents bearing nos.6300/2012 and 6299/2012 registered in the Sub-Registrar's Office, Rural, Kadapa. The 3rd defendant and the said Jaleel had not given them any information about the filing of the suit by the plaintiff. A week prior to the filing of the present petition, the 8th proposed defendant had come to know of the suit proceedings, when he wanted to sell away the property. Since the proposed defendants have purchased the 3rd item of the suit schedule property for valuable consideration and are in possession and enjoyment of the said item of the plaint schedule property they are entitled to agitate their claims and plead before the Court in the suit. Hence the petition is filed for their impleadment."

4. The case of the plaintiff in the counter is as follows: "The alienation made during the pendency of the suit is hit by the Rule enshrined in the doctrine of *lis pendens* in view of the provision of Section 52 of the Transfer of Property Act. The alienees are bound by the outcome of the suit. Therefore, there is no need to permit them to come on record. The petitioners are not entitled to be impleaded as defendants 6 to 8 in the suit. The suit can be effectively and conclusively adjudicated even without the presence of the said proposed defendants. The petition may be dismissed."

5. The trial Court, by the order impugned, had dismissed the petition of the plaintiff following the ratio in the decision in **Ramesh Chawla v. N. Srihari** [2007(4) ALT 17] wherein it was observed that if a person purchases property contrary to the restraint orders, such a person cannot seek impleadment on grounds of equity. Having referred to the above ratio in the above said decision, the trial Court *inter alia* observed that the *ex parte* injunction was passed on 15.02.2012 against the defendants 1 to 5 in the suit; that the said interim injunction order was made absolute as per orders dated 20.06.2012; that the contentions that the proposed defendants had purchased the property

without the knowledge of the pendency of the suit; and that the 3rd defendant had sold the property without informing the purchasers about the pendency of the suit and the orders of the Court cannot be believed; that in the circumstances the petitioners/proposed defendants, who are purchasers subsequent to the injunction orders, cannot be permitted to be added as parties to the suit and that they lack *bona fides*.

6. Apart from their case stated *supra*, the contentions of the aggrieved proposed defendants and the submissions made on their behalf by their learned counsel are as under: “The object of Order I Rule 10 (2) of the Code is to avoid multiplicity of proceedings and to bring before the Court all persons interested in the dispute relating to the subject matter so that all the controversies involved in the suit can be determined without delay once and for all in the presence of all the parties; that the trial Court had failed to notice the object of the provision and had erroneously dismissed the petition; the trial Court ought to have seen that impleadment of the proposed defendants is very much necessary for complete and effective adjudication of the *lis* and that the proposed defendants are entitled to come on record and make necessary claims to protect their interests even though they are purchasers *pendente lite* and that their presence is necessary for comprehensive adjudication of the matter.” **Per contra**, the plaintiff’s learned counsel while reiterating the case of the plaintiff stated *supra*, supported the orders of the Court and had contended that the proposed defendants who had intentionally purchased the subject property in deliberate violation of the orders of injunction cannot seek impleadment on the grounds of equity and that their sale deeds are non est.

7. I have considered the rival contentions. It is not in dispute that the proposed defendants are *pendente lite* purchasers. In **A. Nawab John and Ors. v. V.N. Subramaniam**^[1] the Supreme Court considered elaborately the jurisprudential background of the doctrine of *lis pendens* and also the statutory interpretation of the said doctrine. In the light of principles of law on the doctrine of *lis pendens* settled in **Nawab John** case (1 *supra*), this Court

in **Lebaka Vijaya Bhaskar v. Ambvaram Narayanamma and others**^[2] had examined the provisions of Order I Rule 10 of the Code and had then made a copious reference to the ratios in a number of precedents and had held in that case as follows:

In view of the preponderance of the legal position laid down by the Supreme Court, as above, the petitioner's case for impleadment deserves to be considered and order impugned rejecting the said application is liable to be set aside, as it is opposed to the principle, as above and is based on factually incorrect premise that the petitioner's vendor was a party to the suit.

Thus in view of the preponderance of the legal position, it follows that a request of a purchaser *pendente lite* for impleadment deserves to be considered in the normal course. However, in the case on hand there is one important and critical aspect to be considered. In the case on hand the proposed defendants had purchased the subject property despite an order of injunction. They, nonetheless plead that they are not aware of the suit and that they were not informed about the suit and the orders by their vendors or one Jaleel. Since a case for contempt is also filed against the proposed defendants and others and as the said contempt case is pending, this Court need not go into the aspect of the violation of the orders and the consequences thereof which are likely to fall for consideration in that contempt case. Suffice it is noted that the proposed defendants are *pendente lite* purchasers and by the date of their purchases there is an order prohibiting alienations of the properties, which are subject matter of the suit. At this juncture, it is necessary to refer to the decisions, which are called in aid by both the sides.

8. In support of the contention that the *pendente lite* purchases made by the proposed defendants are *non est*, the learned Counsel for the plaintiff had placed reliance on the decision of the Supreme Court in **Surjit Singh v. Harbans Singh**^[3]. In this cited case, the Supreme Court while holding that the Court would be obliged to treat the alienation or assignment which was made in defiance of the Court's order as *non est* had further held that such an assignee is not entitled to be impleaded as a party to the *lis*. Further in

Vidhur Impex and Traders Pvt. Ltd. And Ors. v. Tosh Apartments Pvt.

Ltd. And Ors. ^[4] the facts of the case disclose that the Delhi High Court had restrained respondent no.2 therein from alienating suit property or creating third party interest, but transactions were entered into in clear violation of the order of injunction passed by the Delhi High Court; therefore, the Supreme Court held that those transactions did not confer any right upon the Appellants or Bhagwati Developers and that therefore, their presence is not at all necessary for adjudication of the question whether Respondent nos. 1 and 2 had entered into a binding agreement and whether Respondent no. 1 is entitled to a decree of specific performance of the said agreement. In this cited decision the Supreme Court having considered the relevant provisions and precedents on the point laid down the broad principles as follows:

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:

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.
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.
6. 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.

From the facts and ratios in the above two cited decisions it appears that *pendente lite* alienations/transfers that are made in violation of restraint orders or injunction orders do not confer any rights on the *pendente lite*

purchasers and that such alienations are to be treated as *non est* and that such *pendente lite* purchasers are not entitled to seek their impleadment in a pending suit and that Courts would be fully justified in declining the prayer for impleadment made by such applicants who are guilty of contumacious conduct or are beneficiaries of clandestine transactions made in violation of restraint orders.

9. It is apt to now refer to a later/recent decision in **Thomson Press (India) Ltd., v. Nanak Builders & Investors P. Ltd.**,^[5]. In this cited case, the question that fell for consideration is this:

“Whether the Appellant who is the transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the Defendants Sawhneys’.

It is trite to mention that the facts of the cited case disclose that after the institution of the suit, the counsel who had appeared for the defendants gave an undertaking not to transfer and alienate the suit property and that notwithstanding the order passed by the Court recording the undertaking given on behalf of the defendants and having full notice and knowledge of all these facts the sister concern of the appellant entered into series of transactions and finally the appellant M/s.Thomson Press got a sale deed executed in their favour by the defendants in respect of the suit property. Therefore, the alienation in that case was made in violation of an undertaking given to the Court and recorded by the Court.

Hon’ble Sri Justice M. Yusuf Eqbal, in his lordships judgment rendered in the cited case finally held as under:

Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the Appellant is to be added as party-Defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

Before parting with the order, it is clarified that the Appellant after implement as party-Defendant shall be permitted to take all such defences which are available to the vendor Sawhneys’ as the Appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the Plaintiff and during the

pendency of the suit.

Hon'ble Sri Justice T.S. Thakur, in his lordships judgment rendered in the cited case held as under:

There is, therefore, little room for any doubt that the transfer of the suit property *pendete lite* is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer.

His Lordship having then referred to the ratio in the decision in **Khemchand Shanker Choudhary v. Vishnu Hari Patil** [(1983) 1 SCC 18], further held as under:

To the same effect is the decision of this Court in *Amit Kumar Shaw v.. Farida Khatoon* (2005) 11 SCC 403 where this Court held that a transferor *pendente lite* may not even defend the title properly as he has no interest in the same or collude with the Plaintiff in which case the interest of the purchaser *pendente lite* will be ignored. To avoid such situations the transferee *pendente lite* can be added as a party Defendant to the case provided his interest is substantial and not just peripheral.

Finally, his Lordship referred to the decision in **Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiamma Dass** [(1976) 1 SCC 103] and summed up the findings as follows:

- (1) The Appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the Plaintiff's and the owner Defendants in the suit.
- (2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant but such title shall remain subservient to the rights of the Plaintiff in the suit and subject to any direction which the Court may eventually pass therein.
- (3) Since the Appellant has purchased the entire estate that forms the subject matter of the suit, the Appellant is entitled to be added as a party Defendant to the suit.
- (4) The Appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original Defendants and none other.

In this decision, the Supreme Court has referred to and considered the earlier decisions in **Surjit Singh and Vidhur Impex (3rd and 4th supra)**. Having regard to the legal position in the three decisions which is discussed above and in view of the precedential guidance and the ratio in the latest decision in **Thomson Press** (5 supra), this Court is of the considered view that the proposed defendants' request for their impleadment has to be considered in the facts and circumstances of the case and also for the ends of justice.

10. Viewed thus, this Court finds that the order impugned brooks interference.

11. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.89 of 2013 in OS.no.33 of 2012 is allowed and the revision petitioners/proposed defendants are permitted to be impleaded as defendants 6 to 8 in the suit.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

25.04.2016

Note: LR copy to be marked.

(B/o)

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[\[1\]](#) (2012) 7 SCC 738

[\[2\]](#) 2013 (6) ALD 184

[\[3\]](#) (1995) 6 SCC 50

[\[4\]](#) AIR2012SC2925

[\[5\]](#) 2013 (3) ALD 111(SC)