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

+ **CS(OS) 1985/2011**

PANKAJ SAHAY & ANR

..... Plaintiffs

Through: Mr. Tanmay Nagar and Mr. Sachin
Sangwan, Advocates.

versus

AMITABH TALWAR

..... Defendant

Through: Mr. Medhanshu Tripathi and Mr.
A.K.Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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08.03.2016

O.A.308/2015(against order dated 7.7.2015 by plaintiffs)

1. This O.A is filed by the plaintiffs impugning the order of the Joint Registrar dated 7.7.2015 by which the Joint Registrar has impleaded Mr. Kumar Pranab and Mrs. Priyanka as defendants nos. 2 and 3 in the present/subject suit for specific performance.

2. Learned Joint Registrar has relied upon the recent judgment of the Supreme Court in the case of *Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Ors., AIR 2013 SC 2389* to hold that merely because a purchaser, either from the defendant or from the transferee

from the defendant, purchases the suit property in violation of the injunction order would not mean that transfer would be invalid but that would only mean that the transfer would not prevent the successful plaintiff from succeeding in the relief of specific performance. Putting it in other words, if there is a suit with respect to an immovable property, and in such a suit an interim injunction order is issued directing not transferring of the property, but yet defendant transfers the suit property, the transfer at best would be hit by the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 if the plaintiff ultimately succeeds and it is not as if the transferee pendente lite ought not to be made as a party/defendant or that in case the plaintiff fails then the transferee would not succeed in owning the property as per the documents transferring title.

3. Admittedly, in the present suit, the suit property was sold by the original defendant/vendor to two persons namely Mr. Rahul Dhulia and Mrs. Neetu Dhulia under sale deed dated 30.12.2011 executed pendente lite, and the applicants thereafter have purchased the suit property from Mr. Rahul Dhulia and Mrs. Neetu Dhulia by a sale deed 19.7.2014. Both the sale deeds dated 30.12.2014 and 19.7.2014 are executed pendente lite and therefore

Order 22 Rule 10 CPC applies for devolution of interest during the pendency of the suit because it has been held by the Supreme Court in the case of ***Dhurandhar Prasad Singh vs. Jai Prakash University & Ors., 2001 (6) SCC 534*** that the issue of devolution of interest under Order 22 Rule 10 CPC has to be looked into differently than an application under Order 22 Rules 2,3 and 4 CPC inasmuch as, merely because of not bringing in persons on whom interest has devolved in the suit property as parties during the pendency of the suit yet the suit continues by and against the original parties to the suit. Applicants therefore have to be added as party-defendants in view of Order 22(10) CPC.

4. Learned counsel for the plaintiffs has placed reliance upon the judgment of the Supreme Court in the case of ***Kasturi Vs. Iyyamperumal and Others (2005) 6 SCC 733*** to argue that with respect to the successful-applicants who have been added as defendant nos.2 and 3, Order 1 Rule 10 CPC does not apply, however, it is seen that the facts in ***Kasturi's case (supra)*** were different inasmuch as the ratio of non-applicability of Order 1(10) CPC was laid down in that case qua a person who was seeking to be added as a party by claiming an independent title independently from the

vendor who was a party to the suit, whereas, the applicants in the present case who have been added as defendants no.2 and 3 are not claiming independent title but are claiming from and through the vendor and who was the original defendant in the suit.

5. I may however clarify that the doctrine of 'bonafide purchaser for value' is not a valid defence to the doctrine of Section 52 of the Transfer of Property Act, and even if the defendants are bonafide purchasers for value, they would only step into the shoes of the existing defendant and they cannot claim any title better than the original defendant in the suit on account of their being subsequent transferees who have purchased the suit property as bonafide purchasers for value.

6. There is therefore no merit in the O.A and the same is accordingly dismissed.

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7. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees

two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge, Patiala House Courts, New Delhi.

8. Let parties appear before District & Sessions Judge, Patiala House Courts, New Delhi on 19th April, 2016. Suit file be made available to the District & Sessions Judge, Patiala House Courts, New Delhi on the date fixed.

VALMIKI J. MEHTA, J

MARCH 08, 2016

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