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

\+ CM(M) 1319/2012

SHEHNAZ BEGUM & ORS. ..... Petitioners

Through Mr.Rajesh Goswami and Ms.Ekta Dhama, Advocates.

versus

LATA MITTAL & ORS. ..... Respondents

Through Mr.Sanjeev Anand and Mr.Aruse Khanna, Advocate for R-1.
Mr.Gaurav Duggal and Mr.Anshul Mittal, Advocates for R-8

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **14.03.2016**

Petitioner is aggrieved by the order dated 19.11.2012 wherein his application seeking review of an earlier order dated 09.10.2012 (vide which the petitioners had sought impleadment under Order I Rule 10 of the Code of Civil Procedure-hereinafter referred to as the Code) in the pending proceedings had been dismissed.

Record shows that a suit for partition had been filed inter se the siblings of the family of the plaintiff (who were the parties in the Trial Court). In the course of those proceedings an order of status quo was passed which was on 23.9.1997. On 02.5.2001 the two daughters of Rajinder Kumar (respondent no.2 before this Court) namely Urmila

Mittal and Shilpa Mittal had given an undertaking to the Court which was to the effect that they will not alienate the suit property i.e. the first floor of property bearing no. 1180, Baradari, Behind Novelty Cinema, Delhi. Urmila Mittal and Shilpa Mittal have been arrayed as defendant nos.1(a) and 1(b) in the Trial Court. They had admittedly undertaken not to alienate the suit property during the pendency of the suit.

The petitioners before this Court are three; they are Shenaz Begum, Rafat Begum and Hussein Begum. Their contention in their application under Order I Rule 10 of the Code was that they are bonafide purchasers of the suit property i.e. the first floor of 1180, Baradari, Behind Novelty Cinema, Delhi by virtue of a sale deed dated 24.01.2012 which has been executed in their favour by Urmila Mittal and Shilpa Mittal and thus their presence in the aforenoted suit for partition is necessary.

The impugned order had declined their prayer and rightly so. There was a status quo order (dated 23.9.1997) operating qua the suit property that order was followed by an undertaking given by Urmila Mittal and Shilpa Mittal (dated 02.5.2001) that they will not alienate the suit property during the pendency of the suit. The so-called registered sale deed dated 24.01.2012 purported to have been executed by Urmila Mittal and Shilpa Mittal in favour of the petitioners (Shenaz Begum, Rafat Begum and Hussein Begum) would be of no consequence entitling them for an impleadment in the suit.

In a similar factual matrix, the Apex Court in (1995) 6 SCC 50 <u>*Surjit Singh and Ors. Vs. Harbans Singh and Ors.*</u> had held that where in defiance of the restraint order an alienation was made, in such a situation the Court has a duty as also a right to treat this alienation as not having taken place and such persons claiming rights pursuant to that alienation cannot be made as necessary parties. The relevant extract of the aforenoted judgment is as under:

" ......In defiance of the restraint order, the alienation/assignment was made. If we were to let it to as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondets herein, cannot claim to be impleaded as parties on the basis of

assignment. Therefore, the assignees-respondents could not have been impleaded by the trial Ccurt as parties to the suit, in disobedience of its orders."

In the another judgment reported as (2012) 8 SCC 384 *Vidur Impex and Traders Private Limited and Ors. Vs. Tosh Apartments Private Limited and Ors.* the Apex Court had reiterated the principles to be followed in an application for impleadment. The Court had categorically noted that if the applicant is guilty of a contumacious conduct or is a beneficiary of a clandestine transaction his prayer for impleadment may be declined. The relevant extract of the aforenoted judgment is noted herein as under:

"41.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:

41.1 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.

41.2 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.

41.3 A proper party is a person whose presence would enable the *court to completely, effectively and properly adjudicate upon all matters and issues, through he may not be a person in favour of or against whom a decree it to be made.*

41.4 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.

41.5 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.

41.6 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 restrained order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.

The impugned order in this background, suffers from no infirmity. This petition is dismissed with costs quantified at Rs.10,000/-

INDERMEET KAUR, J

MARCH 14, 2016
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