

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.626 OF 2005

(Mohd. Ismail Mohd. Yusuf and others Vs. Zulekhabi Gulam Nabi and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri U.J. Deshpande, Advocate for Appellants.
Shri U.N. Vyas, Advocate for Applicant [In CAS 796/18 & 797/18].

CORAM: ROHIT B. DEO, J.

DATE: 22nd DECEMBER, 2018.

Civil Application (CAS) 797/2018:

The applicants are seeking impleadment under Order I, Rule 10 read with Order XXII, Rule 10 and Section 151 of the Code of Civil Procedure.

2] The applicants contend that they have acquired ownership of the suit property under a deed of exchange during the pendency of this appeal.

3] Shri Deshpande, the learned counsel for appellants is opposing the application, *inter alia* relying on the decision of the Hon'ble Apex Court in ***Bibi Zubaida Khatoon, Amichand Aggarwal v. Nabi Hassan Saheb*** reported in ***2004 (1) SCC 191***.

4] The decision cited does not support the submission of Shri Deshpande that since the suit property is acquired during the pendency of this appeal, that *per se* is a ground for rejection of the application seeking impleadment. The Hon'ble Apex Court has noted the earlier

decisions which support the proposition that even a transferee pendente lite is entitled to be impleaded. The Hon'ble Apex Court, after noting the earlier decisions observes in paragraph 9 thus:

9. It is not dispute that the present petitioner purchased the property during pendency of the suit and without seeking leave of the court as required by section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. It is true that when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined was party to enable him to protect his interest. But in instant case, the trial court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action of the alienation does not appear to be bona fide. The trial court saw an attempt on the part of the petitioner to complicate and delay the pending suits.

It would also be relevant to refer to the observations in paragraph 10 which read thus:

10. The decisions cited and relied on behalf of the appellant turned on the facts of each of those cases. They are distinguishable. There is no absolute rule that the transferee pendente lite without leave of the court should in all cases be allowed to join and contest the pending suits. The decision relied on behalf of the contesting respondents of this court in the case of Savinder Singh (supra) fully supports them in their contentions. After quoting section

52 of the Transfer of Property Act, the relevant observations are thus:-

“Section 52 of the Transfer of Property Act envisages that :-

“During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any part to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

It would, therefore, be clear that the defendants in the suit were prohibited by operation of section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.”

5] What is held by the Hon'ble Apex Court is that there is no absolute rule that the transferee pendente lite are in all cases to be allowed to join and contest the pending suits. In the facts of the case, the Hon'ble Apex Court noted that the finding recorded by the Trial Court was that the

petitioner was attempting to complicate and delay the pending suits. It is in that view of the matter, that the Trial Court rejected the prayer for impleadment which view is affirmed by the Hon'ble Apex Court.

6] The decision on which Shri Deshpande is relying not only does not support his submission, the decision runs totally counter to the submission.

7] I do not see any reason not to give opportunity to the applicants who have acquired the suit property during the pendency of this appeal to contest and protect further their interest in the acquired property.

8] The application is allowed.

Civil Application (CAS) 796/2018:

The applicant is seeking injunction restraining the appellants – original defendants from carrying out any construction on the suit property.

2] Shri Deshpande is seeking time to file reply.

3] Shri Deshpande further states that a similar prayer is made in a pending civil suit. The learned counsel for the applicant makes a categorical statement that the subject-matter of the appeal is not the subject-matter – suit property in the Special Civil Suit 194/2018. The statement is accepted.

4] It would be appropriate that till the appellants – original defendants file their reply and are heard, parties should maintain *status quo* as regards the suit property.

5] Stand over to 04.01.2019. Till then, *status quo* as

regards the suit property be maintained.

Civil Application (CAS) 1544/2018:

The application is allowed.

2] The Civil Applications (CAS) 1028/2018, 1030/2018, 1031/2018 and 1034/2018 be amended the name of respondent 5 be included in the array of non-applicants.

3] Shri Deshpande orally prays that similarly amendment be permitted in Civil Applications (CAS) 1029/2018, 1030/2018, 1028/2018, 1035/2018, 1034/2018, 1036/2018, 1032/2018, 1033/2018 and 1031/2018.

4] The oral prayer is allowed. The civil applications be amended properly.

JUDGE