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

+ **FAO 125/2018 & CM No.13169/2018**

RAJWANTI PHOGAT

.... Appellant

Through: Mr.C.S. Parasher, Advocate
with Mr.Mohit Kumar,
Advocate.

versus

GIAN CHAND SETHI & ORS.

..... Respondents

Through: Ms.Savita Malhotra, Advocate
with Ms.Suman Malhotra,
Advocate for R2 and R3.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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10.12.2018

1. The impugned order dated 09.03.2018 passed by the court of learned Additional District Judge-03, North District, Rohini Courts, Delhi ('ADJ') in CS No.57967/2016 titled as "Gian Chand Sethi Vs. Rajwanti Phougat", allowing the application of the applicants/respondent no.2 and 3, who are the subsequent buyers of the property in question from respondent no.1 in terms of the Sale Deed dated 03.07.2014, is the subject matter of challenge in this appeal filed by the appellant/defendant.

2. Learned counsel for the appellant contends that the trial court should have directed the substituted plaintiffs to prove the execution and registration of alleged Sale Deed in their favour by the original plaintiff. He further submits that the alleged Sale Deed was executed in favour of respondent no.2 and 3 by respondent no.1 on 03.07.2014, which was registered on 04.07.2014 and factum of pendency of the present suit is recited in the said Sale Deed. He urges that the application under Order XXII Rule 10 of the Code of Civil Procedure, 1908 ('CPC') having been filed on 06.12.2017 is beyond 3 years of limitation as residuary Article 137 of the Limitation Act, 1963 shall apply.

3. Per contra, learned counsel for the respondent submits that there is no period of limitation prescribed to move such application. He submits that there is no illegality in the impugned order.

4. I have heard the learned counsel for the parties.

5. For convenience, Rule 10 of Order XXII of CPC reads as under:-

“10. Procedure in case of assignment before final order in suit. – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling

the person who procured such attachment to the benefit of sub-rule (1).”

6. It provides that in case of assignment, creation or devolution of any interest during the pendency of a suit, it may, by leave of the court be continued by or against the persons to or upon whom such interest has been assigned/transferred/devolved.

7. This provision came to be interpreted by the Hon’ble Supreme Court in **Dhurandhar Prasad Singh v. Jai Prakash University and others, AIR 2001 SC 2552**, and it was held that ‘6.....*In cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit, which shows that the legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the proceeding would continue by or against the original party although he ceased to have any interest in the subject of dispute in the event of failure to apply for leave to continue by or against the person upon whom the interest has devolved for bringing him on the record. 7. Under Rule 10 Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor*

or any other person interested, to apply to the court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, and yet, as pointed out by Their Lordships of the Judicial Committee in Moti Lal v. Karrabuldin [ILR (1898) 25 Cal 179 : 24 IA 170 : 1 CWN 639 (PC)] he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for, as Lord Kingsdown of the Judicial Committee said in Prannath Roy Chowdry v. Rookea Begum [(1857-60) 7 MIA 323], a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings.'

8. This judgment of the Hon'ble Supreme Court in **Dhurandhar Prasad Singh (supra)** came to be relied upon by the learned Single Judge of this court in **Sirjan Pal Singh vs. Harminder Singh Bakshi & Ors., 207 (2014) DLT 567**, and after relying upon the above said portion of the judgment in **Dhurandhar Prasad Singh (supra)**, held that '*5. Therefore, so far as Order 22 Rule 10 CPC is concerned the judgment in the case of Dhurandhar Prasad Singh (supra) is a direct judgment and which will apply in the facts of the present case for*

substitution of the appellant/applicant because no limitation period is provided for a person to be substituted under Order 22 Rule 10, CPC in place of original party to the proceedings. Also, I do not see any prejudice whatsoever to the respondent before the probate Court, and the respondent in these proceedings, inasmuch as the applicant/appellant is being substituted at the same stage which existed when the application under Order 22 Rule 10, CPC is filed and there is not putting of any clock back or other similar prejudice to the respondent.'

9. Similar view has been taken by the learned Single Bench of this court in **Sheela Wanti Vs. Kuldeep Singh & Another, 100 (2002) DLT 201**, holding that '*Rule 10 of Order 22 CPC does not prescribe any limitation for the impleadment of a person upon whom the interest in the property has devolved and as such at any time during the pendency of the suit he may be substituted*'.

10. Further, the Hon'ble Supreme Court in **Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr., JT 2005(5) SC 20**, has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest and is entitled to be impleaded in the suit or proceedings. Relevant para 16 of the said judgment reads as under: -

“16. The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a

discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

11. It is thus clear that it is the original suit which is to be allowed to be continued under Order XXII Rule 10 CPC if there is an assignment, creation or devolution of any interest in the suit property during the pendency of suit and therefore the question of limitation does not arise.

12. There is no force in the arguments of the learned counsel for the appellant that the trial court should have directed the respondents nos.2 and 3 to prove their Sale Deed allegedly executed by the

respondent No.1 in their favour by ordering impleadment. The Hon'ble Supreme Court in **Amit Kumar Shaw** (*supra*) further held in Para 12 that '*Under Order 22 Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit*'.

13. In view of this discussion, I do not find any infirmity or illegality committed by the learned ADJ in the impugned order. The appeal along with the application, being CM No.13169/2018, is dismissed with no order as to costs.

VINOD GOEL, J.

DECEMBER 10, 2018

"shailendra"