

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4441 OF 2018**

1. Sandeep Ramesh Solanki
Age : 33 years, Occ : Business,
2. Sagar Ramesh Solanki,
Age : 24 years, Occ : Education,
3. Smt. Suvarna Ramesh Solanki,
Age : 57 years, Occ : Household,
All R/o Plot No. 14, Sanyukt
Maharashtra Housing Society,
13th Lane, Rajarampuri,
Kolhapur.

... Petitioners

Vs

1. Sou. Shevanti Dadoba Nashte,
Age : 46 years, Occ : Household,
R/o. 1931/kh., 'E' Ward,
10th Lane, Rajarampuri, Kolhapur.
2. Sou. Shailaja Pravin Nashte,
Age : 29 years, Occ : Household,
R/o. 338, 'E' Ward, Station Road,
Kolhapur.
3. Shri. Bhikaji Vasudeo Lad,
(Deceased) through his LR
- 3-a. Sumitra Bhikaji Lad (Deleted)**
Age : 60 years, Occ : Household,
Plot No. 14, Sanyukt Maharashtra
Co-op. Housing Society, Rajarampuri,
Kolhapur.

4. Umesh Bhikaji Lad,
Age : 38 years, Occ : Business,
Plot No. 14, Sanyukt Maharashtra
Co-op. Housing Society, Rajarampuri,
Kolhapur.

5. Sanjay Bhikaji Lad,
Age : 40 years, Occ : Service,
Plot No. 14, Sanyukt Maharashtra
Co-op. Housing Society, Rajarampuri,
Kolhapur.

6. Ramesh Bhikaji Lad,
Age : 36 years, Occ : Business,
Plot No. 14, Sanyukt Maharashtra
Co-op. Housing Society, Rajarampuri,
Kolhapur.

7. Sanyukt Maharashtra Co-op. Housing
Society Limited,
Through its Chairman,
Rajarampuri, 13th Lane, Kolhapur.

... Respondents

Shri. A.M. Kulkarni, advocate for the Petitioners.

Shri. S.S. Shah i/b. Datta H. Pawar, Advocate for Respondent
No. 1 & 2.

Mr. P.P. Kulkarni, Advocate for Respondent No. 4 to 6.

CORAM : SANDEEP K. SHINDE J.

Reserved on : July 9th, 2019

Pronounced on : 18th July, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith. With consent of the
parties, petition is taken up for the final hearing.

2. Petitioners' application under Order I Rule 10(2) of Civil Procedure Code, 1908 in Special Civil Suit No. 361 of 2000 instituted by the respondents no. 1 and 2 has been rejected by the Learned Court on 18.11.2017, against which, this petition under Article 227 of the Constitution of India is preferred. Special Civil Suit No. 361 of 2000 is instituted by the respondents no. 1 and 2 (hereinafter called 'plaintiffs') against respondents no. 3 to 7 (hereinafter called 'defendants') for specific performance of agreement dated 14.08.1999 executed by the defendants no. 1 to 4 in respect of the suit plot. The suit plot is owned by the Sanyukt Maharashtra Co-operative Housing Society ('Society' for short) of which respondents no. 1 and 2 were members and allottees. Thus, Society is defendant no. 5 in the suit as "proper party". Pending suit, the respondents no. 3 and 4 surrendered the suit plot to the Society and thereafter the society executed a lease on 08.03.2004 of the suit plot in favour of the petitioners to which respondents no. 3 and 4 were consenting parties. It is petitioner's case that on 19.01.2004, the possession was handed over to them by the society and were admitted to

membership of the society. It is their case that soon after taking possession, they constructed a bungalow on the suit plot and had no knowledge of the Special Civil Suit No. 361 of 2000 instituted by the respondents no. 1 and 2 against the respondents no. 3 & 4.

3. On 01.04.2015, the petitioners filed an application under Order I Rule 10 (2) of Civil Procedure Code, 1908 and sought impleadment as the defendant in the Special Civil Suit No. 361 of 2000. Learned Judge rejected the said application against which, this petition is preferred.

4. Mr. Kulkarni, Learned counsel for the petitioners submits that Petitioners are in possession of the suit plot on the basis of Tripartite Lease executed by the society dated 08.03.2004 to which respondents no. 3 and 4 are consenting parties. He further submits that respondents no. 3 and 4 surrendered the suit plot to the said society and thereafter society executed lease deed, followed by the possession. He submits, petitioners have acquired a valid title or interest in suit property and therefore urged that the presence of the petitioners is necessary in order to enable the Court effectively and

completely to adjudicate upon and settle all the questions involved in the suit. Mr. Kulkarni further submits that the petitioners were unaware of the subject suit proceedings till 2015, and as soon as they learnt about the suit, an application for impleadment was filed.

5. Mr. Shah, learned counsel for the plaintiffs submits that it is not conceivable to hold that the petitioners were ignorant of the suit proceedings instituted by the respondents no. 1 and 2, the respondents no. 3 and 4 in-as-much-as the society, who executed lease in favour of the petitioners in March, 2004 were/are defendants in the suit. He submits that the application preferred for impleadment does not even remotely suggest that before acquiring interest in the suit plot, the petitioners made any inquiry or exercised due diligence, to ascertain title of the suit plot. He further submits that the lease dated 08.03.2004 is an unregistered document and respondents no. 3 and 4 (defendants) have denied execution of the lease. He submits, suit is now closed for arguments. Mr. Shah submits inordinate delay has not been explained and application for seeking impleadment does not disclose source of knowledge of the

petitioner. He therefore submits, the Court correctly rejected the application and no interference in the order is called for.

6. Perused the application. It is unclear from the application for impleadment, as to when and how the petitioners learnt about the suit proceedings; however it is certain that petitioners did not exercise due diligence, before acquiring interest in the suit plot. It may also be stated that impleadment was sought in 2015 and Court rejected the application in 2017. Though this petition has been filed in January, 2018, it appears that no steps were taken by the petitioner to get the petition listed or at least to inform the Trial Court about challenge pending to its order in the High Court. It is only when Court, closed the suit for “arguments”, petitioners sought urgent circulation of this petition. This Court therefore holds the application for impleadment as party was not within reasonable period has been unduly delayed.

7. Mr. Shah further submits that in view of principle underlying Section 52 of the Transfer of Properties Act, during the litigation, nothing new should be introduced and the litigating party is

exempted from taking notice of the title required during the pendency of the litigation. He submits that transferee pendente lite is bound by the decree just as much as he was party to the suit. He submits that the petitioner is not party to the agreement for sale and therefore, it cannot be said that without his presence, the dispute as to specific performance cannot be determined.

8. Therefore, the questions falling for consideration are ;

(i) Whether the petitioner, who is the transferee pendente lite, who had knowledge of the pendency of the suit for specific performance can be impleaded as party under Order I Rule 10.

(ii) Whether the transferee pendente lite as a matter of right, can seek impleadment as defendant under Order I Rule 10 (2) of the Civil Procedure Code, 1908.

Order I Rule 10 of Civil Procedure Code, 1908 empowers the Court to add any person as a party at any stage of proceedings, if the person whose presence before the Court is necessary for effective

adjudication of the issues involved in the suit. Provisions of Order I Rule 10(2) of Civil Procedure Code, 1908 gives wider discretion to the Court to proceed with a person, if necessary party or proper party and whose presence in the Court is essential for effective determination of the issues involved in it. It is well settled that in the suit for specific performance of the contract, no one other than the party to agreement to sale is a necessary and proper party. However, provisions of Order XXII Rule 10 of Civil Procedure Code, 1908 would show that in case 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. Whether independent of Order I Rule 10 of Civil Procedure Code, the prayer for impleadment made by the petitioner can be considered in the light of Order XXII Rule 10 of Civil Procedure Code has been answered by the Apex Court in the case of ***Thomson Press (India) Ltd. Vs. Nanak Builders & Investors Pvt. Ltd. & Ors. [2013 (5) SCC 397]***, thus;

“Our answer is in the affirmative. It is true that the application which the appellant made was only

Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.

55. We are not on virgin ground insofar 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. In *Khemchand Shankar Choudhari v. Vishnu Hari Patil* (1983) 1 SCC 18 this Court held that : (SCC p. 21, para 6)

“ 6. The position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding...”

Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite : (SCC pp. 20-21, para 6)

“6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a

transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceedings is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out.”

(emphasis supplied)

9. The Apex Court thus while answering the issue has considered the provisions of Section 52 of the Transfer of Property Act and said transferee pendente lite of immovable property which is subject matter of the suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit.

However, Order XXII Rule 10 of the Civil Procedure Code clearly recognizes the right of transferee to be impleaded as a party to the proceeding and to be heard before any order is made.

10. It is held in the case of ***Thomson Press (India) Ltd. (supra)*** that:

“The Supreme Court in many cases has 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. Sometimes, a transferor pendente lite may not even defend the title properly as he has no interest in the same or may 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. This is particularly so where the transferee pendente lite acquires the interest in the entire estate that forms the subject-matter of the dispute.”

However, in the case of ***Vidur Impex and Traders Pvt. Ltd & Ors. Vs. Tosh Apartments Pvt. Ltd. & Ors. (2012) 8 SCC 384***, the

Supreme Court laid down that,

“Taking note of all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Para 41 is worth quoting hereinbelow: (SCC p. 413)

“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, though he may not be a person in favour of or against whom a decree is 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 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.”

11. On consideration of facts of the case, it would be unreasonable to hold that petitioners were unaware of the pending suit instituted by the respondents no. 1 and 2 against respondents no. 3 and 4, relating the property, when they allegedly acquired leasehold interest therein. In 2004, petitioners acquired possession/ lease hold interest under lease deal executed by the society/ the defendant no. 5 in the subject suit instituted in 2000, to which the respondents no. 3 and 4 were consenting parties. A fact cannot be overlooked that the society has not caused its appearance in the suit, but through it, the petitioners acquired leasehold interest. Therefore, petitioners are also deemed to have become aware of the said suit. Therefore prima facie conduct of the petitioner is not above board. Besides this Court has held that application for impleadment was vague and has not been filed within reasonable period. More so, civil suit for specific performance instituted in the year 2000 is now closed for arguments.

12. That for the reasons stated, petition deserves no consideration.

It is dismissed.

(SANDEEP K. SHINDE, J.)