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

\+ **FAO (OS) 157/2018**

JASWIN ARORA ..... Appellant

Through: Mr. Kunal Tandon with Ms. Niti Jain, Mr. Girdhar Singh and Mr. Amandeep Singh, Advocates.

versus

HARMEET SINGH SOOD & ORS ..... Respondents

Through: Mr. Rajshekhar Rao with Mr. Ravi Kapoor, Mr. Karthik Sundar, Mr. Rishav Ambastha and Mr. Umang Kapoor, Advocates for R-7.

Ms. Arti Bansal, Advocate for DDA.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **04.02.2020**

Dr. S. Muralidhar, J.:

1. This appeal is directed against two impugned interim orders of the learned Single Judge dated 13th September, 2018 in OA No.8 of 2018 in CS (OS) 3056 of 2014 and I.A. No.19555 of 2014 in the same suit.

2. The Appellant is the Plaintiff in the aforesaid suit. He is seeking specific performance of an Agreement to Sell/Memorandum of Understanding (‘MoU’) dated 19th May, 2012 and 22nd May, 2012 in respect of the basement (front and rear portion), ground floor and terrace along with the proportionate rights of the property at No. D-16, Greater Kailash Enclave-I,

New Delhi (hereafter, "the property in question") entered into between him and Defendant Nos.1 and 2 in the suit who have been impleaded in the present appeal as Respondent Nos.1 and 2.

3. On 30th April 2014, the original owner of the property in question Mr. Joginder Kapoor (impleaded as Respondent No.4 herein) entered into an Agreement to Sell (ATS) in respect of some portions of the suit property with Defendant/ Respondent Nos.1 and 2. It is the case of the Plaintiff that the above ATS/MoU was entered into by the Plaintiff with Defendant Nos.1 and 2 as attorney of Defendant No.3.

4. The case of the Plaintiff is that since entering into the above MoU/ATS, Defendant No.4 Mr. Joginder Kapoor had unauthorizedly trespassed to the rear half ground floor portion of the property in question. Defendant No.1 had applied for getting the leasehold property converted into freehold with the office of the Delhi Development Authority ('DDA'), i.e. Defendant No.5 in the suit (Respondent No.5 herein).

5. The Plaintiff/Appellant filed CS (OS) 3056/2014 on 23rd September, 2014 seeking the above reliefs. Along with the suit he filed IA No.19555 of 2014 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') for interim injunction. Notice on this application was issued to the Respondents/Defendants on 9th October, 2014.

6. An interim order was passed on 9th October, 2014 by the learned Single Judge, restraining the Defendants/Respondents from selling, alienating,

transferring or parting with possession or creating any third-party rights and interests in the property in question.

7. On 5th May, 2016 Respondent Nos. 6 and 7 herein (Ms. Janki Devi and Ms. Sapna Yadav respectively) filed an application being I.A. No.6500 of 2016 under Order I Rule 10 CPC in which they claimed to have purchased the rear portion of the ground floor and rear portion of the lower ground floor of the property in question from Respondent Nos.2 and 4 respectively, who had in turn allegedly purchased the rear ground floor portion from Respondent No.1 (Mr. Harmeet Singh Sood). Respondent Nos.6 and 7 also claimed to be in possession of the property in question.

8. The case of Respondent Nos. 6 and 7 was that they were not aware of the interim order passed by the Court on 9th October, 2014 and that in the meanwhile, on 20th October, 2014 two separate sale deeds were registered in favour of Respondent Nos. 6 and 7 in respect of the rear portion of the ground floor and rear portion of the lower ground floor respectively of the property in question. They accordingly claimed that they were *bona fide* third-party purchasers without the knowledge of the pendency of the suit or the stay order. They explained that on 23rd November, 2015, the learned Single Judge permitted the Plaintiff to affix a signboard on the property in question, mentioning the fact of the pendency of the litigation. Pursuant thereto, the signboard was fixed. According to Respondent Nos. 6 and 7, it is only then that they became aware of the pendency of the suit.

9. In their application it was mentioned that Defendant No. 4 Mr. Joginder

Kapoor had already filed his written statement dated 23rd May, 2015 in the suit wherein a preliminary objection was taken about his having already sold the rear portions of the ground and lower ground floor to Respondent Nos.6 and 7 by a title document dated 25th September, 2014 and possession thereof had also been handed over to them. This was reiterated elsewhere in the written statement as well. Respondent Nos.6 and 7 asserted that they were in physical possession of the respective portions of the property in question. They prayed, in the aforementioned I.A. No.6500 of 2016 under Order I Rule 10 (2) of the CPC, that they should be impleaded as Defendant Nos.6 and 7 in the suit. On 31st October, 2017, the Joint Registrar of this Court allowed the impleadment of Respondent Nos.6 and 7.

10. Aggrieved by the above order, the Plaintiff/Appellant herein, filed OA No.8 of 2018. By the first impugned order dated 13th September, 2018 the learned Single Judge dismissed the said appeal, aggrieved by which the present appeal has been filed by the Plaintiff.

11. The learned Single after examining the decisions in ***Kasturi v. Iyyamperumal (2005) 6 SCC 733***, ***Vidhur Impex and Traders Private Limited v. Tosh Apartments Private Limited (2012) 8 SCC 384*** and ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited (2013) 5 SCC 397***, as well as the decisions of this Court in ***Charanjeet Singh Rekhi v. Harish Ahuja (2014) 7 High Court Cases (Del) 83***, and ***Dharampal Satyapal Ltd. v. Sanmati Trading and Investment Ltd. ILR (2014) 2 Del 1204,*** held that in the present case both the Plaintiff and the proposed Applicants i.e. Respondent Nos.6 and 7 derived title from the

same persons i.e. Defendant Nos.1 and 2. Thus, the parties claim rights through the same vendor and some portions of the property in question were overlapping between the two transactions. It was held by the learned Single Judge as under:

> "14. The court is not at this stage adjudicating the actual portions purchased by both sets of parties. However, if any decree is passed against Defendants No. l and 2, who are now ex-parte, since the proposed Applicants claim through the said Defendants, the judgment and decree would be binding on them. The final order which would be passed would undoubtedly affect the rights of the proposed-applicants in respect of the overlapping portions of the suit property. Such parties would then be necessary parties as also proper parties to the suit. In the present case, the agreement to sell between the proposed Applicants -and Defendant No. 4 was executed two days prior to the filing of the suit i.e. 25th September, 2014. Thus, the transaction was not in violation of the restraint order passed by this Court, though the sale deed was executed thereafter. In fact, as of 20th October, 2014, when the sale deeds were executed, it is not even clear whether Defendants No.1, 2 and 4 were even served with the, summons in the suit. In fact, the service report of 19th February, 2015 records that Defendants No. 1, 2 and 4 are un-served. This completely changes the character of the sale in favour of the proposed Applicant. The sale cannot be characterized as being clandestine or a result of contumacious conduct. The order passed by the Joint Registrar cannot thus be faulted with."

12. By the following separate order on the same date the learned Single Judge, which too has been challenged in this appeal, disposed of I.A. No.19555 of 2014 under Order XXXIX Rules 1 and 2 of the CPC:

> "4. Learned counsel for the Defendant Nos.6 & 7, who are now in possession of the property and who acquired title from the Defendant No.4, who in turn is claimed to have acquired title from the Defendant Nos.1 & 2, fairly submits that his clients

> will not create any third-party interest and shall maintain the status quo with respect to title and possession. However, he submits that the Plaintiff has put up a board outside the property, which is causing inconvenience to his clients. Since the Defendant Nos.6 & 7 have agreed to be bound by the interim order to not create any third-party interest, there is no requirement of having board on the property. The board is directed to be removed within four weeks. I.A. is disposed of in the above terms."

13. This Court has heard the submissions of Mr. Kunal Tandon, learned counsel appearing for the Appellant and Mr. Rajshekhar Rao, learned counsel appearing for the Respondents/Defendant Nos.6 and 7.

14. The Court would first like to deal with the issue whether impleading the third-party purchasers, thereby changing the character of the suit for specific performance, would be considered to be a legal error warranting interference?

15. Mr. Tandon referred repeatedly to Section 19 of the Specific Relief Act, 1963 ('SPA') and in particular to clause (b) to urge that there was no occasion for the learned Single Judge to have allowed the application by Respondents No.6 and 7 for impleadment. Section 19 of the SPA reads as under:

> "19. **Relief against parties and persons claiming under them by subsequent title.**
>
> Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—
>
> (a) either party thereto;

> (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
>
> (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
>
> (ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.
>
> (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
>
> (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:
>
> Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

16.1 The above clause came up for consideration in ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited*** (*supra*). In that case, Nanak Builders and Investors Private Limited ('NBIPL') filed a suit for specific performance against the Defendant i.e. the Sawhneys for specific performance on agreement to sell. In the said suit, the Sawhneys undertook/stated that till the disposal of the suit, the property in question in that case would not be transferred or alienated.

16.2 During the pendency of the suit, five sale deeds were executed by the Sawhneys in favour of the Appellant, Thomson Press India Limited ('TPIL'). On the basis of those sale deeds, TPIL filed an application under Order I Rule 10 CPC for impleadment as co-Defendant. It was not in dispute that prior to the institution of the suit for specific performance, NBIPL got a notice published in the newspaper regarding its Agreement to Sell with the Sawhneys.

16.3 The Single Judge of this Court dismissed the application on the ground that the sale in favour of the TPIL itself was in violation of the undertaking given by the Sawhneys which was in the nature of an injunction. After the Division Bench affirmed the order of the Single Judge, TPIL appealed to the Supreme Court.

16.4 The contention of TPIL *inter alia* was that where a subsequent purchaser has purchased a suit property and is deriving its title through the same vendor, then he would be a necessary party provided it has purchased it with or without notice of the prior contract.

16.5 In interpreting Section 19 (b) of the SPA, the Supreme Court referred to its earlier decision in ***Vidur Impex and Traders Private Limited v. Tosh Apartments Private Limited*** (*supra*) where after taking note of all earlier decisions, the Court laid down the following broad principles governing the disposal of an application for impleadment:

> "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."

16.6 The Supreme Court in ***Thomson Press India Limited*** (*supra*) also discussed Section 52 of the Transfer Property Act, 1882 ('TPA'), which governs the doctrine of *lis pendens* and observed that it "does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation".

16.7 The Supreme Court, next, in ***Thomson Press India Limited*** (*supra*) examined Order I Rule 10 of the CPC and observed that "it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party, whose presence in the Court is essential for effective determination of the issues involved in the suit".

16.8 On the facts of that case, the Supreme Court in ***Thomson Press India Limited*** (*supra*) came to the conclusion that TPIL had entered into a clandestine transaction with the Sawhney's and got the property transferred in their favour and therefore TPIL could not be held to be a *bonafide* purchaser without notice.

16.9 Nevertheless, the Supreme Court noticed the status of a person, who claims title under the Defendant, acquired subsequent to the contract. It was obvious that the subsequent purchaser was subject to the rider provided under Section 52 of the TPA and the restraint order passed by the Court. The Supreme Court in ***Thomson Press India Limited*** (*supra*), then discussed the decision of the Calcutta High Court in ***Kafiladdin v. Samiraddin AIR 1931 Cal 67*** and in particular to the following observations of the Supreme Court in ***Durga Prasad v. Deep Chand AIR 1954 SC 75***:

"42. In our opinion, the proper form of decree is to direct

> specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in – *Kafiladdin v. Samiraddin, AIR 1931 Cal 67 (C*) and appears to be the English practice. See *Fry on Specific Performance, 6th Ed. Page 90*, paragraph 207; also – *'Potter v. Sanders', (1846) 67 ER*. We direct accordingly."

16.10 In the above circumstances the Supreme Court in ***Thomson Press India Limited*** (*supra*) concluded as under:

> "Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside."

17. In the present case, in response to the application of Respondents/Defendants 6 and 7 under Order I Rule 10 of the CPC, the stand taken by the Appellant reads as under:

> "That the application as has been filed by the applicants is otherwise also not maintainable in as-much as the applicants had not shown any due diligence while dealing with the seller, Mr. Joginder Kapoor, while allegedly purchasing the property in question. Rather, the applicants in order to delay and defeat the right and claim of the plaintiff in respect of the property in question, which the plaintiff has been seeking vide the instant suit, the applicants had conspired with the seller and had bought the property for a meagre amount of Rs. 1,12,00,000/- whereas the value of the said property is Rs.4,00,00,000/- which clearly goes to show that the applicants have allegedly get the property assigned in their name in collusion and connivance with the seller. Hence the application is liable to be dismissed with heavy

costs on this score alone."

18. In view of the above stand, the ratio of ***Thomson Press India Limited*** (*supra*) would squarely apply in the case of the Petitioner. This is also consistent with the law explained by the Supreme Court in ***Vidur Impex and Traders Private Ltd. v. Tosh Apartments Private Ltd.*** (*supra*).

19.1 Learned counsel for the Appellant placed considerable reliance on the decision in ***Kasturi v. Iyyamperumal*** (*supra*) to urge that the Plaintiff in a suit for specific performance is *dominus litis* and cannot be forced to add parties against whom he does not want to fight.

19.2 The relevant passage of the said decision on which reliance was placed reads as under:

> "17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is *dominus litis* and cannot be forced to add parties against whom he does not want to fight **unless it is a compulsion of the rule of law**, as already discussed above." (emphasis supplied)

19.3 The part of the sentence that requires to be noticed is that the Plaintiff cannot be forced to add parties against whom he does not want to fight "unless it is a compulsion of the rule of law".

20. In the facts of the present case, by not impleading Respondents No.6 and 7 at this stage, there would inevitably be a multiplicity of litigation. The Court considers it to be necessary and consistent with the rule of law that the

impleadment of Respondents Nos. 6 and 7 as co-Defendants in the suit ought to be allowed. Otherwise all that the Appellant/Plaintiff would have even if he succeeds in the suit would be a paper decree which cannot be executed and which when put in execution would give rise to a fresh round of litigation at the instance of Respondent Nos.6 and 7 with no real benefit to the Plaintiff. It will be open to the Plaintiff to appropriately modify the pleadings in the plaint as well as the prayers in light of the impleadment of Respondents Nos.6 and 7 as co-defendants in the suit.

21. For the aforementioned reasons, the Court finds no reason to interfere with the impugned judgment of the learned Single Judge, as far as the impleadment of Respondent Nos.6 and 7 as co-Defendants is concerned.

22. Now turning to the second part of the order where the earlier order for placing a board in the property in question has been withdrawn by the learned Single Judge, this Court notes that there is a clear undertaking by Respondents/Defendants Nos.6 and 7, as recorded in the impugned order that they "will not create any third party interest and shall maintain the status-quo with respect to title and possession". Further, it will always be open to the Plaintiff to seek to enforce that undertaking in the event that there is any attempt to alienate the property in question during the pendency of the suit. The Court is of the view that this is sufficient protection to the Plaintiff and there is indeed no requirement for any board to be placed in the property in question announcing that there is litigation concerning the said property pending in the Court. Consequently, even this part of the order does not call for interference.

23. The appeal is dismissed but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 04, 2020
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