

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12151 OF 2022

Rakesh Rajendrakumar Agarwal.

...Petitioner.

Versus

Madhukar Atmaram Bhoir.

..Respondent.

Mr. Rajesh Kachare i/b Mr. Ajay Patil for the petitioner.

Mr. G. S. Godbole, Senior Advocate along with Mr. Sumit Kothari and Mr. Gaurav Gopal and Mr. Mohit Goyal i/b Wadia Gandhi & Co., for respondent No.4.

Coram : Sharmila U. Deshmukh, J.

Date : July 6, 2023.

P. C. :

1. The petitioner questions the order dated 15th March 2022 passed by the trial Court in Regular Civil Suit No.479 of 2013, rejecting the petitioner's application preferred under Order-I Rule-10 of the CPC seeking impleadment as party defendant.

2. Regular Civil Suit No.479 of 2013 was instituted seeking the relief of perpetual injunction restraining the defendant therein from alienating the suit property in favour of third party and for a declaration that the agreement dated 21st April 1989 be declared null and void. In the said suit, application came to be filed by the present

petitioner on 11th February 2022 under the provisions of Order-I Rule-10 CPC. It was contended in the said application that the applicant is a *bonafide* purchaser of the suit property who had purchased the said property by way of a registered sale deed dated 4th January 2019 from plaintiff nos.2 and 3. The petitioner sought to be impleaded as party defendant to the suit as he had a direct and substantial interest in the suit property and would be bound by the outcome of suit.

3. The plaintiff by its reply dated 7th March 2022 placed on record its no objection to add the petitioner herein as party to the suit. An objection was, however, raised by the defendant to the suit that the relief claimed by plaintiff was in respect of impugned sale deed and, as such, the presence of present petitioner is not necessary. The trial Court considered the objection of the defendant and arguments of the applicant and rejected the said application, giving rise to the present petition.

4. Heard Mr. Rajesh Kachare, learned counsel appearing for petitioner and Mr. Girish S. Godbole, learned senior counsel appearing for respondent no. 4.

5. Mr. Kachare, learned counsel for the petitioner points out that there is no objection by the plaintiff for impleading the petitioner

as party to the suit and it is the defendant who has raised the objection and the said objection was considered by the trial Court. He would further submit that during the pendency of proceedings, the petitioner has purchased the suit property by way of registered sale deed dated 4th January 2019 and being *bonafide* purchaser for valuable consideration, having acquired the share of plaintiff nos.2 and 3, the petitioner deserves to be impleaded in the suit. He would seek to place reliance on the provisions of Order-XXII Rule-10 of CPC and would submit that in case of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may be continued by or against the person to or upon whom such interest has come or devolved.

6. I have declined to hear learned senior counsel for respondent no.4 for the reason that this Court is informed, and, which position is not disputed by learned senior counsel for respondent no.4, that during the pendency of this proceedings, respondent no.4, who was the original defendant, has divested himself of all right, title and interest in the suit property in favour of third parties. As such, in my opinion, it is not necessary to take into consideration the objection of respondent no. 4.

7. Considered the submissions of learned counsel appearing for

the petitioner.

8. The undisputed position is that plaintiff who is *dominus litis*, has no objection to add the petitioner as a party to the proceedings and the objection has been raised by the defendant to the suit, i.e., respondent no.4 herein, who now has divested himself of all right, title and interest in the suit property. The objection of defendant is that the earlier application to add the petitioner as a party to the suit was rejected holding that the petitioner is not a necessary party to the suit and his presence is not required and Court can pass effective decree even in the absence of petitioner.

9. The trial Court has failed to take into consideration the decision of Apex Court in ***Thomson Press (India) Ltd v. Nanak Builders & Investors (P) Ltd [(2013) 5 SCC 397]***. The Apex Court in that case was considering the issue as to whether the transferee *pendente lite* having notice and knowledge about the pendency of suit for specific performance can be impleaded as a party under Order-I Rule-10 on the basis of sale deed executed in their favour by the defendant. After noticing the decisions on the subject, the Apex Court has held thus :

"54. The third dimension which arises for consideration is about

the right of a transferee pendete lite to seek addition as a party-defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is 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).”

A simple reading of the above provision would show that in cases of 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. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII 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 pendete 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 in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendete 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 Shanker Choudhary v. Vishnu Hari Patil](#) (1983) 1 SCC 18, this Court held that :

“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 :

“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 in so far 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 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, 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).

56. To the same effect is the decision of this Court in Amit Kumar

Shaw v. Farida Khatoon (2005) 11 SCC 403 where this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or 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 interest in the entire estate that forms the subject matter of the dispute. This Court observed :

“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”

To the same effect is the decision of this Court in [Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass](#) (deceased) through his Chela Shiama Dass, (1976) 1 SCC 103.

10. The Apex Court has taken into consideration not only the provisions of Order-I Rule 10 CPC but also the enabling provisions of

Order-XXII Rule-10 of the CPC which can always be invoked if the situation demands. The apex Court noted that the transferee *pendente lite* can be added as a party to the suit lest the transferee suffers prejudice on account of the transferor losing interest in the litigation post transfer. The trial Court has decided the issue holding that the petitioner is not a necessary or proper party to the proceedings but has failed to consider that the claim of petitioner is that being a bonafide purchaser for value, the petitioner has acquired an interest in the suit property and will be directly affected by the outcome of suit.

11. Another aspect which favours the petitioner's impleadment in the suit is that the plaintiff has no objection to add the petitioner as a party-defendant and it is only upon consideration of the objection of defendant, the application came to be rejected on the ground that earlier application for impleadment of petitioner as a party being rejected. Admittedly, the said application was filed by the plaintiff himself and not by the present petitioner. While rejecting the earlier application, the trial Court has held that the right title and interest in the suit property will be subject to the final adjudication in the suit. It appears that decision of the Apex Court in the case of **Thomson Press (supra)** was not brought to the notice of the trial Court.

12. The next question which will have to be considered is: whether the findings in the earlier proceedings will operate as *res judicata* in view of the

rejection of the earlier application. The said issue may not detain this court any further in view of the decision of the apex Court in the case of ***Varadharajan v. Kankavalli [(2020) 11 SCC 598]***, wherein the Apex Court in the context of an enquiry under Order XXII Rule-5 of the CPC has held that the enquiry under the said provision is of summary nature for the purpose of bringing the legal representatives on record and does not operate as a *res judicata*.

13. In the present case, the earlier finding on the issue of impleadment of petitioner as a party to the proceedings, in my opinion, will not operate as a *res judicata* in the subsequent application in the light of decision of ***Varadharajan (supra)***.

14. In the light of above, the impugned order rejecting the petitioner's application is unsustainable and is hereby quashed and aside. Application dated 11th February 2022 preferred by the petitioner stands allowed.

15. Writ petition stands allowed.

[Sharmila U. Deshmukh, J.]