



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3601 OF 2024

**PANDURANG BHALCHANDRA PAWAR
VERSUS
SATYABHAMA VIKRAM BHISE AND OTHERS**

...
Advocate for Petitioner : Mr. Dhiraj R. Jethliya
Advocate for Respondent No.1: Mr. S. V. Natu
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 07th MAY, 2024

ORDER:

1. Heard.
2. By the present petition, the petitioner is challenging the order dated 07.03.2024 passed by the C.J.S.D., Latur, whereby the application filed under Order 1 Rule 10 of the CPC by the petitioner to implead him as a necessary party in the suit is rejected on the ground that the application is filed at the fag end of the proceedings and the final arguments are partly heard by the court and that the application is not bonafide and is made only to defeat the right of plaintiff no.3.
3. The facts leading to the filing of the present petition are summarised as under:-

A. The plaintiffs filed the suit for partition on 26.04.2010 against the defendant. The plaintiff no.1 is the husband of plaintiff no.2 and father of plaintiff no.3 as well as the sole defendant.

B. On 29.12.2010, plaintiff no.1 sold portion of the suit land to the present petitioner i.e. the son of sole defendant and the grandson of Dhondiram / plaintiff no.1. Plaintiff no.1 expired on 08.11.2013 and plaintiff no.2 expired on 01.11.2012. Thereafter, the suit proceeded further.

C. On 07.03.2024, the petitioner filed an application below Exhibit 187 in RCS No.209 of 2010 praying for impleadment as defendant no.2 in the suit claiming that he is a purchaser of the part of the suit land and he become aware of the suit when notice was issued to him to place on record the copy of the sale deed, as such, thereafter, he sought impleadment in the suit.

D. The application filed by the petitioner is rejected by order dated 07.03.2024 and the same is challenged in the present petition.

4. The learned counsel for the petitioner has relies upon the judgments in the case of **Khemchand Shankar Choudhari & another Vs. Vishnu Hari Patil & others** reported in [1983] 1 SCC 18, in the case of **Dhanlakshmi and others Vs. P. Mohan and others** reported in [2007] 10 SCC 719, in the case of **A. Nawab John and others Vs. V. N. Subramaniyam** reported in [2012] 7 SCC 738 and in the case of **Chandra Bai [Dead] Through Legal Representatives Vs. Khandalwal Vipra Vidyalaay Samiti and others** reported in [2016] 12 SCC 534 and contends that he being purchaser *pendente lite* has a right to be impleaded as a party defendant in this suit.

5. Per contra, the learned counsel for respondent no.1 / plaintiff no.3 relies upon the judgment in the case of **Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and another** reported in [2004] 1 SCC 191 and submits that the trial court has assigned the cogent reasons while rejecting the application for impleadment and that the trial court has rightly passed the impugned order. The learned counsel submits that the application filed is only to delay the proceedings as the applicant is aware of the suit and has filed the application at the fag end of the suit after more than 10 years and the application is filed only to delay the plaintiff no.3 from getting the fruits of the decree. Plaintiff no.3 being the

daughter of the plaintiffs no.1 and 2 and sister of sole defendant attempt is being made to deprive her of the fruits of the decree.

6. Having considered the rival submissions, it is to be noticed ordinarily the transferee pendente lite is permitted to implead himself as a party in the suit. As such, the decree can be effectively passed. So also, the person who has sold the property may lose interest in prosecuting the suit.

7. However, the judgment of the Hon'ble Apex Court in the case of **Bibi Zubaida Khatoon** (supra) would be squarely applicable to the instant case. In the instant case, the petitioner has purchased the property during the pendency of the suit in the year 2010. However, he had moved the application for impleadment in the year 2024 towards the far end of the trial. The suit is at the stage of argument. The trial court has noticed that in the instant case by the sale deed in the entire portion of Gut No.123 and 1 Hectare 16 Ares from Gut No.104 has been disposed of in favour of the petitioner by the above sale deed and because of the purchase by the petitioner the undivided share of the plaintiff no.3 in the suit property would be affected if the suit is ended in her favour. The trial court has observed that the co-sharer has the right to sell his undivided share during the pendency of the suit but if the said alienation is affecting the other parties then the said alienation to the extent of excessive

portion of the property will not be binding upon the other co-sharers nor in such circumstances the transferee pendente lite can be allowed to take the plea of bonafide purchaser.

8. The trial court has observed that the applicant is well aware of the proceedings and it is also to be noticed that the contention of the applicant that he came to know only of the dispute in the month of January – 2022 is the ex-facie concocted one as the suit land is purchased by him from his father the original defendant and the notice is issued by the defendant / father to the son / petitioner to place on record the sale deed to clearly create the situation to seek impleadment of the petitioner in the suit and thus delay the suit.

9. The Hon'ble Apex Court in the case of **Bibi Zubaida Khatoon** (supra) in somewhat similar kind of situation has observed as under:-

“7. The learned senior counsel Shri S. B. Sanyal strenuously urged that even though the petitioner is a transferee pendente-lite within the meaning of section 52 of the Transfer of Property Act to afford effective opportunity to her to prosecute the suit for redemption of mortgage and the counter suit for specific performance of the contract, her joinder in two suits as party and prayer to bring subsequent events on record by proposed amendment to the pleadings ought to have been allowed by the trial court. It is submitted that the High Court ought to have interfered in the orders of the trial court as the latter had failed to exercise its judicial discretion in accordance with law. Reliance is placed on Khemchand Shankar Choudhari & Anr vs. Vishnu Hari Patil &

Ors [1983(1) SCC 18]; Jayaram Mudaliar vs. Ayyaswami & Ors [AIR 1973 SC 569]; Savitri Devi vs. District Judge, Gorakhpur & Ors. [AIR 1999 SC 976]; Saila Bala Dassi vs. Nirmala Sundari Dassi & Anr. [1958 SCR 1287]; and Dhurandhar Prasad Singh vs. Jai Prakash University & Ors. [2001 (6) SCC 534].

9. It is not disputed 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 as 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.

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 :-

"6. Section 52 of the Transfer of Property Act envisages that :-

‘During the pendency in any court having authority within the limits of India \005.. 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 party 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. "

11. In case of Dhurandhar Prasad Singh(supra), observations relevant for the purpose of these appeals read thus :-

"Where 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, yet 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."

10. The law laid down by the Hon'ble Supreme Court in the above case while considering section 52 of the Transfer of Property Act would be squarely applicable to the facts of this case.

11. The property is purchased by the petitioner without taking leave of the court and that the petitioner has taken the risk that the suit may not be properly conducted by the plaintiff or his legal heir and the application is filed belatedly. The reason given for delay cannot be accepted and are obviously concocted.

12. The right flowing from the valid sale deed if any can be protected by the vendee in the execution proceedings to the extent of the share that would be available to the vendor. However, the applicant would have no right to add himself at belated stage of the suit. The trial court to also ensure while passing preliminary decree of partition to grant share to each of plaintiff as on the date of filing of the plaint and thereafter further distribute the share of deceased plaintiff to other legal heirs. This will protect the rights of third parties if there is transfer of the share of deceased plaintiff during the pendency of the suit or prior to the suit to the extent of share of the deceased plaintiff.

13. With the above observations, the writ petition is dismissed.

[ARUN R. PEDNEKER, J.]