



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Application (CAS) No. 1613 of 2023

in

Second Appeal No. 406 of 2023

[Mahesh S/o Gordhandas Chellani ..vs.. Kanta D/o Arjundas Bajaj and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Dewani, Advocate for the applicants/intervenors
Mr. S. U. Nemade, Advocate for the appellant

CORAM : ANIL L. PANSARE J.

DATED : 30-01-2024

The application has been filed to seek intervention in second appeal on the ground that pending appeal, respondents – original defendants have sold the suit property to the intervenors. According to applicants, the respondents, having sold the suit property, may not contest the appeal and, therefore, applicants' presence will be helpful to adjudicate the issue involved in second appeal.

2. Learned counsel for the applicants submits that the appellant has knowledge of the alienation and has even issued notice dated 28-8-2023. Thus, according to him, the appellant ought to have made applicants party respondents.

3. Learned counsel for the appellant has countered the submissions. He submits that the intervenors cannot be permitted to join in second appeal. He states that the prayer of intervention is hit by Section 52 of the Transfer of Property Act, 1882. He has relied upon the judgment in the case of *Sanjay Verma Vs. Manik Roy and others*

[(2006) 13 SCC 608]. The Supreme Court has held in paragraph no. 12 as under.

“12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

4. Thus the Supreme Court has held that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit and Section 52 only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.

5. In the present case, the appellant – original plaintiff had filed suit for specific performance of the contract. The trial Court did not grant specific performance but ordered refund of earnest money. The appellant carried the judgment of trial Court before the first appellate Court which was pleased to dismiss the appeal. Thus, both the Courts below have declined to grant specific performance of the contract.

6. As such, pending appeal, the respondents ought not to have sold the suit property without permission of the Court. However, considering the concurrent findings rendered by the Courts below and without approving the alienation made pending appeal, the request of intervenors may be considered if respondents do not effectively contest the appeal.

7. Subject to above, the appellant is directed to add intervenors as party respondents.

8. The amendment be carried out within seven working days.

9. The copy of appeal memo be served upon the added respondents.

10. The application is disposed of in above terms.

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11. Stand over to 13-2-2024.

12. Interim order to continue till then.

(Anil L. Pansare, J.)