

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 2842 OF 2024

GOBARDHAN GHOSH & ANR.

VS

SWADHIN PANDIT & ORS.

For the Petitioner : Mr. Amit Baran Dash, Adv.
Mr. Subhrajyoti Ghosh, Adv.
Ms. Ankana Sarkar, Adv.

For the Opposite Parties : Mr. Biswarup Biswas, Adv.
Ms. Nupur Choudhuri, Adv.

Last heard on : 24.06.2025

Judgement on : 11.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. The instant revisional application is directed against an order of refusal to allow the prayer made by the petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure on April 24, 2024 passed by the Learned Court of Civil Judge, Jr. Division, Krishnanagar Nadia in Title suit number 75 of 2017. The Opposite Parties here in being the plaintiff filed a suit for declaration, demarcation and injunction being Title suit number 40 of 2017 before the Court of Learned Civil Judge, Junior Division, First Court at Krishnanagar, Nadia, subsequently transferred before the Additional Court of Civil Judge,

Junior Division and renumbered as Title Suit No.75 of 2017, which is pending before the Court for proper adjudication. The case made out by the plaintiffs in the plaint is that the suit property situated at RS Khatian number 7411, L. R khatian number 3452/2, 4827/6321/6948, R. S block number 529/9408, L.R number 743, under Mauja, number 60, Debagram , Police Station, Kali Ganj District, Nadia, measuring about 1.58 acres originally belonged to one Shankari Mohan Pandit, who sold 6.65 decimal of land in favour of one Nithya Nanda Roy vide two registered deed of sale dated October 24, 1991, measuring about five decimal and dated February 19, 2002 measuring about 1.65 decimal of land, specially demarcating the boundaries. A Strip of land on the eastern side of the said purchased portion of Nityanand Roy, measuring about 173.25 ft. remained in possession of Shankari, Mohan Pandit. The said Nithya Nanda Roy being the defendant in the suit tried to encircle said 173.25 square feet of land by making false claim and the plaintiff initiated a proceeding under Section 145 of Cr.Pc but the local R.I without taking any measurement prepared a distorted report and taking advantage of the same said Nityananda may sale the land to the promoters. Hence the plaintiffs had to file the suit for declaration, demarcation and injunction, having no other option.

2. In the said suit, the written statement was filed by the defendant/Nityananda Roy denying all the allegations as levelled against him and stated that defendant number 1 was the recorded owner of 6.65 decimal of land and by virtue of a power of attorney as executed in favour of Ratan Kumar Singh and Shantanu Chatterjee, by the defendant number 1, a registered deed of sale was executed in favour of Govardhan Ghosh and Toton Ghosh that is the

petitioners in this revisional application and they are the necessary parties. The present petitioners also mutated their names in the record of rights and enjoying the same came to know about the above referred title suit in respect of his suit property in the year 2023. They purchased the property from Nityananda Roy without being aware about pendency of any suit or proceeding to the property in dispute. Accordingly, the present petitioners filed one application under Order 1 Rule 10 (2) of CPC in order to add the petitioners as defendant in the suit. After hearing both the parties the Learned Trial Court, rejected the prayer on the ground that the transfer was done during pendency of the suit and is hit by section 52 of the Transfer of Property Act. The sale deeds as filed before the court shows that the transfer was made after the initiation of the instant suit and further that the plaintiff who is a *dominus litis* cannot be forced to add parties whom he does not want to add , unless it is a compulsion under the rule of law. It was held by the learned Court that the present petitioners are not the necessary parties to the instant suit.

3. The learned advocate appearing on behalf of the petitioner argued that the present petitioners purchased the property on good faith by virtue of registered deed of conveyance from Nitya Nanda Roy measuring about 6.65 decimal of land which was specifically demarcated. Therefore, when the dispute pertains to the property of which the present petitioners are the owners, they are the necessary parties as the outcome of the suit if goes against the defendant then the right title and interest of the present petitioners will be highly prejudiced. The learned counsel relied upon decision reported in **2024 (4) Indian civil cases, 48 (SC) Yogesh Goenka versus Govind and others** where it has been observed that the doctrine of *lis pendens* as provided under section 52 of the

Act does not render all transfers *pendent lite* to be *void ab-initio*, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the court may pass there under. In the said case, the pro-forma respondent purchased the land from respondent number 21, vide registered deed of conveyance. The dispute cropped up when the plaintiffs filed the suit against the defendant and Respondent No.21 that is the original defendant seeking permanent injunction and declaration to the effect that the released Deeds and the sale deeds are null and void after being appraised about the temporary injunction, other *pendente lite* purchasers of the subject land filed an application for impleadment under Order 1 Rule 10 CPC which got dismissed by the concerned court holding that no need arises to implead the applicant as the permission of the court was not sought to the sale and more importantly, they were not bona fide purchasers and they were cognizant of the underlying suit prior to their purchase. The said order was challenged before the High Court and the order of the Trial Court was upheld with the observation that the impleadment application was untenable as the RSD itself was nullity as hit by doctrine of *lis pendens* as provided under section 52 of the transfer of property act. The matter travelled up to Supreme Court where considering the fact and circumstances the Hon'ble Supreme Court held that the learned trial court misplaced reliance on **Bibi Zubaida**¹ as it does not place a bar on impleadment of transferees who purchase property without seeking leave of the court but only said the transferee purchaser cannot as a matter of right seek impleadment.

¹ (2004) 1 ICC (Sc) 610

4. It was held by the Hon'ble Supreme Court in paragraph 19 & 20 of the judgement as follows;

'19. The respondent here in assails the impleadment of the appellant on the ground that he is not a bona fide purchaser as he had full knowledge of the pending litigation. While that is the admitted position, there exists no bar to the impleadment of transferees' pendent lite with notice. Permitting the impleadment of a transferee pendent lite is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests, specially when the transferor fails to defend the suit or where there is a possibility of collusion.

20. In the particular facts and circumstances of that case, that plaintiffs approached the court in the underlying suit after a substantial delay of 11 years where as admittedly, the revenue records were mutated to reflect the name of respondent number 21 since 2007 , the claim of non-payment of consideration by the Appellant was made for the first time before the said court .Therefor considering the totality of the circumstances in this case, including the fact that the trial has not progressed significantly, in the interest of justice, allowed the prayer of

*impleadment in the suit in order to protect his interest,
if any in the subject land.'*

5. In the decision as relied upon by the learned advocate of the petitioner reported in², Shri Niranjana Ghosh since deceased represented by Ila Ghosh and another versus Shri N. P. K Bose, it was held by a Coordinate Bench of this High Court, relying on the decision of ***Pannala Renuka w/o Parbathal Reddy and another versus Kavali (Raju Mouni) Venkataiah & ors. A.I.R 2007, AP, (para 8)*** where it was contended that alienee pendente lite is a person to purchase suit property during pendency of the suit in gross violation of principle of section 52 of the transfer of property Act, who has no unenforceable, legal right and a person who violates the law and acquired the right, can never be treated as a decree passed against his vendor and cannot as a right be impleaded in the suit, in paragraph 9, of the judgement it was held.

'9. This court is of the view that the Appellants originally have also not been put on notice as they are to continue with proceeding in the appeal. However, in respectful consideration of the decision in Anand Kumar Shaw (supra) and having regard to the object of order 1 rule 10 of CPC to discourage contents on technical pleas, and to save honest and bona fide claimants from being nonsuited, the power to strike out or at parties can be exercised by the court at any stage of the proceeding; applicant may be included as

² 2021 (2) Indian Civil cases 463 (cal)

proper parties to the appeal in the club of the appellant.’

6. The other judgement, which is relied upon by the learned advocate of the petitioner reported in³ **Shri Prasanta Chowdhury versus Madan Das and ors**, the dispute pertains to appointment of advocate commissioner to investigate description of property, therefore, prima facie the facts and circumstances as well as the points for consideration of the case is entirely distinguishable on the facts from the present matter and is not applicable.
7. In order to buttress the contention of the advocate of the petitioner the learned advocate of the Opposite Party relied upon a decision reported in⁴ **Anjanappa & Ors. Versus A. Prabhakar & Ors**. In the said case, in a case of specific performance of contract, the defendant in contravention of specific order of injunction sold a portion of suit property in favour of stranger and thereby created a third party rights. The High Court granted leave to appeal to the Respondent no 12. The subsequent purchasers against the original judgement and decree of specified performance as they were not the parties in the suit, after condoning a delay of 586 days and this was challenged up to Supreme Court where the point for consideration was, a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of aggrieved person and secondly, rejection of application filed under Order 1 rule 10 CPC per se is not a ground to reject application for leave to file appeal, a transfer *pendente lite* is not illegal *ipso jure* but remains subservient to pending litigation. In that case the application under Order 1

³ 2021(2) Indian Civil Cases,462 (cal)

⁴ 2025 0 Supreme (SC) 244

Rule 10 was earlier rejected. It was observed that such order of rejection was not challenged and such per se cannot be a ground to reject the application for leave to file Appeal. The Hon'ble Supreme Court took note of several judicial pronouncement which includes ⁵ **Nagubai Anmal & Ors. vs B. Sharma Roy & Ors.** Where also it was observed a transfer pendent lite is not illegal ipso jure but remains subservient to the pending litigation. The decision of **Vinod Seth versus Devendra Bajaj**⁶ was taken note of by the Hon'ble Supreme Court, where it was held that Section 52 does not render transfers affected during the pendency of the suit void, but only render such transfers subservient to the rights as may be eventually determined by the court. The following passage in this regard is apposite.

'42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only render it sub serviant to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void, but rendered the transfer in operative in so far as the other party to the suit. Transferred of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.'

⁵ AIR 1956 SC 593

⁶ (2010) 8 SCC 1

8. The Hon'ble Supreme Court further took note of the decision reported in⁷ Amit Kumar Shaw vs Farida Khatun in paragraph 54. Where it was held that'

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 XXII Rule 10, alienee pendente lite may be joined as a 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 interest. 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 included in the suit or other proceedings where his predecessor-in – interest is made a party to the litigation; he is entitled to be impleaded in the suit or other proceeding where his predecessor – in – interest is made a party to the

⁷ AIR 2005 SC 2209

litigation; he is entitled to be heard in the matter on the merits of the case.'

9. The Hon'ble Supreme Court in the case of H .Anjanappa and others (supra) further held that the purpose of impleading a transferee pendente lite should be gone into and basing on the necessary facts, the court can permit such a party to come on record, either under Order 1 Rule 10 CPC or under Order 22, Rule 10, as a general principal. The learned advocate of the opposite party further relied upon the decision reported in⁸ **2008 Supreme (Cal) 135 in Padmavathi estate Private Limited versus Kusum Agarwal and others** where the application for addition of party in a suit for specific performance of contract filed by the plaintiff was rejected. The petitioner was admittedly transferee pendente lite who purchased the suit property from the defendant by registered deed of conveyance and claimed to be in possession of the suit property since the time of purchase. There was no injunction against alienation of property at the point of time when it was transferred in favour of the petitioner. The Coordinate Bench took note of several judicial pronouncement, including the decision of Bibi Zubeida Khatoon (*Supra*), Amit Kumar Shaw (supra) and held as no independent interest is created in the suit property in favour of the pendente lite transferee by virtue of such purchase, such pendente lite transferee whose purchase is hit by Section 52 of the transfer of property act cannot be impleaded as a party in a suit for specific performance of contract where the only consideration before the Court is to find out as to whether there is any enforceable contract between the parties and further as to whether the plaintiff succeeded in proving his readiness and willingness for

⁸ 2008 Supreme (cal) 135

purchasing the suit property as per Section 16(C) of the Specific Relief Act. It was further observed that for adjudication of the aforesaid dispute, the presence of the Pendente lite transferee is not at all necessary and therefore the petitioner is neither necessary party nor a proper party in the present suit.

10. In the light of above judicial pronouncement and the fact and circumstances of different cases, let the fact of the instant case be looked into once again.

a) the suit was filed by the plaintiff/opposite parties for declaration, demarcation, and injunction against one nityananda Roy the original defendant.

b) the petitioners in order to purchase the property, approached the defendant of that suit being Nithya Nanda Roy and purchased 6.65 decimal of land with specific demarcation by the registered deed of sale and became owners of the said portion of land and recorded their names in the record of rights. It came to their knowledge in the year 2023 about the pendency of the above Title suit in respect of the property and they filed the petition under Order 1 Rule 10 to CPC on October 16, 2023 with a prayer to be added in the proceeding.

c) The plaintiff's right was emanated from the owner of the property Shankari Mohan Pandit, who died on 6th June, 2003, leaving, and surviving the legal heirs who are the plaintiff and defendant in the suit.

d) No order of injunction was there against the defendants from transferring or alienating the suit property during pendency of the suit.

e) In the written statement filed in the suit, the original defendant admitted the transfer of the said property vide registered deed of sale through a power of attorney and they are in possession of the suit property and hence the original defendant has lost interest in the suit, but as those persons are necessary party they must be added in the suit.

11. The point for consideration is that whether the transferee purchasers can be pleaded as a party or not in this suit. In the decision of the Hon'ble Supreme Court in Yogesh Goyanka versus Govinda & others (*supra*) where the purchaser /appellants were allowed to be impleaded in the suit in order to protect interest. It is a settled proposition of law that the purchaser can have no higher right than that of the vendor, and in the instant case since the sale was made during the pendency of the litigation, the result of the litigation will abide the purchaser. The Hon'ble Supreme Court expressing the possibility of collusion in that case, since the parties were relatives and was a delay of 11 years, the prayer of impleadment of the petitioner/applicant was allowed. In this case also the in view of the written statement filed by the defendant expressed his loss of interest in the proceeding cannot be ignored and the defendant's right title and interest in the suit property is to be decided by the learned trial court after considering the evidences to be adduced before the

court. The instant suit is not of specific performance of contract as it was in the case of H. Anjanappa (*supra*) as well as Padmavati Estate Pvt. Ltd for where the purpose of adjudication of the said nature of dispute the presence of the pendente lite transferee is not at all necessary. Though in the decision of H. Anjanappa Hon'ble Supreme Court has discussed the meaning and applicability of the impleadment of alinee pendente lite. In this case as discussed above the Suit was for declaration ,demarcation and injunction and the original defendant has expressly lost interest in further proceeding of the suit and at this stage unless the petitioners are allowed to be impleaded in order to represent on behalf of the original defendant under the parameters of the provision itself without agitating any further defence in respect of the title of the property other than the defence taken by the original defendant then their legally enforceable right to protect their interest may be hampered . This court fully agree with the observation of the Learned trial court that the plaintiff being dominus litis cannot be forced to add a person a party whom he does not want to add but at the same time the discretionary power given under the provision itself to add or strike out any of the parties cannot also be overlooked. It is the discretion of the Court which must be judicially exercised. Therefore the transfer made without the leave of the Court during pendency of the litigation will not ipso jure make the entire transfer to be void ab-initio but certainly renders the rights emanating from such transfer as subservient to the rights of the parties and therefore that itself cannot be a ground for not allowing the impleadment and therefore the said order is liable to be set aside.

12. Accordingly the Revisional application stands allowed .The order impugned is hereby set aside.

13. The learned court is directed to implead the petitioners as party defendant in the underlying suit.

14. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)

