

Madhukar Atmaram Bhoir and Others ...Petitioners
vs.
Baddrudin Abbas Patel ...Respondent

Mr. Sumanth Anchan a/w. Ms. Naveli Reshamwalla and Ms. Janhavi Hirlekar, for the Respondent.

DATE : MARCH 20, 2025

1. Rule. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.

2. The challenge in this petition is to an order dated 9th September, 2024 passed by the learned Civil Judge, Vasai on an application (Exh.182) preferred by the plaintiff to implead the subsequent transferees as party-defendants to the suit and carry out consequential amendments in the plaint under Order 1 Rule 10 r/w. Order 6 Rule 17 of the Code of Civil Procedure, 1908 (the Code).

3. The petition arises in the backdrop of the following facts:-

3A. The petitioners No. 2 and 3, who claimed to be the legal representatives of Madhukar Bhoir, the deceased petitioner No. 1, and Smt. Yashoda (P2), instituted a suit for declaration and injunction in respect of the properties bearing Survey Nos. 70/4

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and 71/3 situated at Bapane, Tal. Vasai, Dist. Thane (the suit properties). The plaintiffs claimed that the suit properties were acquired by their father Atmaram Bhoir. After the demise of Atmaram, the plaintiffs were the absolute owners of the suit properties and were in possession and cultivation thereof.

3B. In the month of March, 2013, in the wake of revenue proceedings, it transpired that on 21st April, 1989 the defendant had got a false and fabricated instrument purportedly executed by plaintiffs in his favour, and registered before the Registrar of Assurances. The plaintiffs claimed they had never executed the said instrument. Nor they appeared before the Registrar of Assurances. They had not known the defendant. Nor had they received any consideration under the said instrument. The defendant had fraudulently and dishonestly prepared false instrument dated 21st April, 1989 and by setting up fictitious persons got the same registered. On the strength of the said instrument, mutation entries were also effected in the record of rights.

3C. The plaintiffs thus instituted a suit for declaration that the said instrument dated 21st April, 1989 is null and void and to restrain the defendant from alienating the suit property or creating third party interest therein.

4. During the pendency of the suit, it seems, the defendant transferred portions of the suit property in favour of a number of persons. The plaintiffs filed an application for impleadment of those transferees and also for consequential amendment. By an order dated 23rd February, 2021, the said application came to be rejected. The trial Court was of the view that prima facie relief against the transferees appeared to be barred by limitation as the assertion of the plaintiffs that they became aware of the said transfers in the month of June, 2018 was contentious. Moreover, the transfer in favour of the transferees was subject to the decree that may be passed in the suit as the principle of *lis pendens* contained in section 52 of the Transfer of Property Act, 1888, was attracted.

5. The plaintiffs assailed the said order before this Court in Writ Petition N. 5390 of 2022. By an order dated 6th July, 2023, the said petition was disposed with liberty to the plaintiffs to file a fresh application by impleading the proposed defendants as party respondents to the said application.

6. The petitioner filed fresh application seeking impleadment of the transferees by impleading them as respondent Nos. 2 to 17 therein. By the impugned order, the learned Civil Judge was again persuaded to reject the application. The learned Civil Judge was of the view that the decree which may be eventually passed in the suit

would bind the transferees as the transfers were effected during the pendency of the suit. It was also held that the plaintiff had not sought the relief of cancellation of the subsequent transfers.

7. Mr. Kishor Patil, the learned counsel for the petitioners, strenuously submitted that the aforesaid finding of the trial Court is against the weight of the material on record. Mr. Patil invited attention of the Court to paragraph Nos. 6 and 8 of the application wherein the plaintiffs have incorporated the text of the draft amendment and the draft prayer to be added as clause (bb) in the prayer clause, seeking declaration qua those instruments executed during the pendency of the suit.

8. Thus, the impugned order, according to Mr. Patil, suffers from non application of mind. It was further urged that the presence of the transferees is indispensable for the effective and complete adjudication of the dispute. No prejudice would be caused to the defendant by impleading the transferees as the party defendants to the suit. Since, there is transfer of interest of defendant No.1, in favour of the transferees, they have a direct interest in the subject matter of the suit. Therefore, the trial Court should have permitted the impleadment of the transferees as party defendants.

9. Mr. Sumanth Anchan, the learned counsel for the respondent/defendant, supported the impugned order. Mr. Anchan submitted

that the application for impleadment was preferred belatedly with a view to protract the trial in the suit which was directed to be completed within a period of six months by the Supreme Court by an order dated 24th February, 2021 passed in Special Leave to Appeal (C) Nos. 2246-2247 of 2021. The plaintiffs have shown no earnest interest to prosecute the suit. Their only intent was to protract the trial.

10. Mr. Anchan further submitted that in the said order dated 24th February, 2021, the Supreme Court has directed that third party rights, if any, created would be subject to the result of the civil suit. This order of the Supreme Court protects the interest of the plaintiff, in addition to the principle of *lis pendens* which subjugates the transfer during the pendency of the suit to the outcome of the suit. Therefore, in the peculiar circumstance, according to Mr. Anchan, the impleadment of the transferees is not necessary.

11. Normally, an application for impleadment of a subsequent transferee is considered favourably as, with the transfer, the original defendant transferor may cease to have any interest in the subject matter of the suit and the transferee would be the person vitally interested in the outcome of the suit as it would bind him. The Court also permits the impleadment of such party as during the pendency of the proceeding, such transfer and devolution of

interest are bound to occur, especially when there is no interim restraint on the transfer, to avoid the multiplicity of the proceedings and decide all the questions in controversy between the parties in one and the same proceeding.

12. It is well settled that the addition of a party is not a matter of initial jurisdiction but one of judicial discretion. Such discretion is, however, required to be exercised judiciously having regard to all the relevant factors. The test that is usually applied is, whether the party who is sought to be impleaded has a direct interest in the subject matter of the suit as distinguished from a temporal or commercial interest.

13. In the case at hand, few peculiar facts deserve to be kept in view. First, the plaintiffs have instituted the suit seeking a declaration that the instrument purportedly executed by plaintiff Nos. 1 to 4 in favour of the defendant on 21st April, 1989 is forged and fabricated and it does not bind them. The suit came to be instituted in the month of September, 2013. Second, the parallel revenue proceedings went up to the Supreme Court. In the petition for Special Leave to Appeal (C) Nos. 2246-2247 of 2021 filed by plaintiff No. 2 and others, the Supreme Court passed the following order:-

“Since the matter is pending before the Civil Court
between the parties, the judgment passed by the Civil Court

will be binding on both the parties. The trial Court is directed to decide the civil suit within six months on merits without fail. The third party rights, if any, created will be subject to the result of the civil suit.”

(emphasis supplied)

14. Evidently, the time stipulated by the Supreme Court has elapsed long back. In the aforesaid order, the Supreme Court having noted the pendency of the Civil Suit between the parties, in terms, observed that, the judgment passed by the Civil Court will be binding on the parties and the the third party rights, if any, created will be subject to outcome of the civil suit. Under the provisions of section 52 of the Transfer of Property Act, *pendente lite* transfer are not per se illegal. However, those transfers are rendered subservient to the rights which may be determined by the Court in such proceeding.

15. Mr. Patil would urge that the order passed by the Supreme Court in Special Leave to Appeal (C) Nos. 2246-2247 of 2021 arose out of a revenue proceedings. The said order may not adequately protect the interest of the plaintiffs. It is, therefore, necessary to implead the transferees as party defendants for a complete and effectual adjudication of the dispute. To lend support to this submission, Mr. Patil placed reliance on a judgment of the Supreme Court in the case of **Thomson Press (India) Limited vs. Nanak**

Builders and Investors Private Limited and Others¹.

16. In the said case, a transferee pendente lite had approached the Court seeking impleadment in a suit for specific performance. As the transfer was found to have been effected in breach of the injunction order, the learned single Judge as well as Division Bench of Delhi High Court had declined to implead the transferee as party to the suit. The Supreme Court set aside the orders passed by the High Court. It was held that the transferee pendente lite was required to be added as party defendant in the said suit and permitted to take all defences which are available to the vendor. The observations of the Supreme Court in paragraphs 53 to 57 are material and hence extracted below.

53} There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

54} The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party defendant to the suit under Order 1, 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

1 (2013) 5 Supreme Court Cases 397.

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 22 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 22 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 22 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 Shankar Choudhary v. Vishnu Hari Patil*, (1983) 1 SCC 18, this Court held that : (SCC p. 21, para 6)

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: (SCC pp. 20-21, para 6).

“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: (SCC p.411, para 16).

“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 pendente 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 the transferee pendente lite 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.

57} To sum up:

57.1) The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

57.2) The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

57.4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

(emphasis supplied)

17. As noted above, there can be no duality of opinion that a transferee pendente lite is vitally interested in the litigation. Conversely, the transferor, post transfer, may no more have any interest in the suit property and may not effectively defend the suit. Ordinarily, a transferee pendente lite is impleaded as a party defendant especially in a suit for specific performance. Under section 19 of the Specific Relief Act, specific performance of a contract may be enforced against any person claiming under the party to the contract by title arising subsequent to the contract, except a transferee for value without notice of the original contract.

18. However, there is a subtle yet significant difference in the approach of the Court where a transferee pendente lite seeks impleadment as a party defendant. Such a prayer for impleadment receives favourable consideration. But, where the plaintiff seeks the impleadment of a transferee pendente lite and there are concomitant circumstances which are arrayed against the plaintiff, different considerations may come into play.

19. In the case at hand, the nature of the suit claim assumes importance. The plaintiffs are seeking relief in respect of an instrument which they had purportedly executed on 21st April, 1989. The suit came to be instituted in the year 2013. By an order dated 24th February, 2021, noting the pendency of the suit, the

Supreme Court directed the trial Court to decide the civil suit within six months, on merits without fail. The Supreme Court further clarified that the third party rights, if any, created will be subject to the result of the suit. Indisputably, the principle of *lis pendens* also operates.

20. The resistance on behalf of the defendant that the impleadment of the transferees is sought to further protract the trial, deserves to be appreciated in the aforesaid context.

21. From the perusal of the impugned order, it becomes clear that proposed defendants No. 4, 11 and 12 appeared before the trial Court and resisted their impleadment. The application for impleadment proceeded without reply of proposed defendant Nos. 3, 5 to 10 and 13 to 18. The said development indicates that the transferees were fully cognizant of the pendency of suit No. 479 of 2013 and the challenge therein to the title of their vendor. The proposed defendants No. 2 to 18 can thus be said to have exercised a choice not to appear and get themselves impleaded in the said suit. Thus, in the peculiar facts of the case, the aforesaid order passed by the Supreme Court, specifically making third party rights, created during the pendency of the suit, subservient to the result of the civil suit, further fortifies the protection of *lis pendens*.

21. In the aforesaid backdrop, the impleadment of the proposed defendants as party defendants to the suit does not seem to be imperative. The eventual decree that may be passed would bind the transferees, especially when they have chosen not to get themselves impleaded as party defendants. Therefore, in the facts of the case at hand, the trial Court can not be said to have committed any error in declining to implead the subsequent transferees as party defendants to the suit.

Hence, the following order.

ORDER

- 1} The petition stands dismissed.
- 2} The learned Civil Judge is requested to make an endeavour to hear and decide the suit as expeditiously as possible without being influenced by any of the observations hereinabove.
- 3} Rule discharged.
- 4} No costs.

(N. J. JAMADAR, J.)