

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.10679 OF 2024
IN
CIVIL REVISION APPLICATION NO.559 OF 2010**

Runwal Developers Pvt. Ltd.	...	Applicant
and		
The Devdut C.H.S. Ltd.	...	Org. Applicant
versus		
Ava Jamshed Lalkaka and Ors.	...	Org. Respondents

Mr. Rohaan Cama with Mr. Pheroze Mehta, Mr. Dhiren Durante, Mr. Dev Bhankharia i/by Lexicon Law Partners, for Applicants.

Mr. Sagheer Khan with Ms. Tasmiya Siddiqui i/by Jidicare Law Associates, for Org. Applicant.

Mr. Simon Mascarenhas i/by Mulla and Mulla and Craigie Blunt and Caroe, for Respondent Nos.1(a) and 1(c).

Mr. V.Y.Sanglikar with Ms. Archana Gawas for Respondent No.2.

CORAM: N.J.JAMADAR, J.

DATE : 20 JUNE 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application to substitute the applicant for and stead of Respondent Nos.1(a) to 1(c) in the Civil Revision Application No.559 of 2010.
3. Civil Revision has been preferred by the original Defendant aggrieved by the judgment and decree dated 3 July 2010 passed by the Appellate Bench of the Court of Small Causes, directing the original Defendant to handover vacant and peaceful possession of the demised premises. Siloo Dara Zaiwalla – original Respondent No.1 and Dr. Behram Sethna – original

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Respondent No.2, had instituted the suit for recovery of possession of the demised premises. During the pendency of the Revision Application, Original Respondent No.1 (Plaintiff No.1) passed away on 15 August 2017, leaving behind a Will and Testament dated 21 January 2003, whereunder the original Respondent No.1 bequeathed all her properties to her husband Dara R. Zaiwalla. Respondent Nos.1(a) to 1(c) were appointed as the executors / executrices. Thus, Respondent Nos.1(a) to 1(c) came to be impleaded as party Respondents. This Court granted Probate in respect of the said Will of Respondent No.1. Thereafter, on 8 February 2019, the executors executed a Deed of Transfer in favour of Dara Zaiwalla.

4. Under a Deed of Conveyance dated 8 December 2023, Dara sold, transferred and conveyed all his right, title and interest in the demised premises in favour of the Applicant. Thus, the applicant claimed to have become the sole and absolute owner of the demised premises. Hence, this Application to substitute the applicant in place and stead of Respondent Nos.1(a) to 1(c).

5. Respondent – Original Applicant did not resist the prayer to substitute the applicant.

6. Respondent No.2 – Co-plaintiff, however, filed an affidavit in reply to resist the application for substitution. It was, inter alia, contended that the Silloo (Respondent No.1), the sister of Respondent No.2, was not the owner

of the suit property. The alleged conveyance in favour of the Applicant was stated to be clandestine and fraudulent. The right of Respondent Nos.1(a) to 1(c) and Dara to convey the suit property to the Applicant was also put in contest. In any event, since the transfer has been effected during the pendency of the suit, without obtaining the leave of the Court, it was affected by the principle of *lis pendens* and the Applicant was not entitled to be impleaded as party to the proceedings.

7. I have heard Mr. Rohaan Cama, learned Counsel for the Applicant, and Mr. Sanglikar, learned Counsel for Respondent No.2, at some length.

8. Mr. Cama would urge, since there has been a devolution of interest in favour of the Applicant during the pendency of the Application, under a registered instrument, the Applicant deserves to be impleaded as a party to the Application. Mr. Cama would urge, in the affidavit in reply itself the Respondent No.2 has categorically conceded that the Respondent No.2 has only 50% undivided right, title and interest in the suit property and the balance vested with original Respondent No.1. Thus, the Respondent No.2 has no locus to oppose impleadment of the Applicant.

9. Mr. Sanglikar, learned Counsel for Respondent No.2, would urge that the very deed of conveyance indicates that the Applicant was aware of the pendency of the proceedings, and, yet, without seeking leave of the Court, as mandated by Section 52 of the Transfer of Property Act, 1888, the Applicant

has purportedly acquired interest in the suit property. The transaction is clearly hit by the principle of lis pendence. In such a situation, the Applicant is not entitled to be impleaded as party to the Application.

10. Mr. Sanglikar made an endeavour to draw a distinction between a case where the Plaintiff seeks to implead transferee *pendente lite* and the case where the transferee *pendente lite* himself approaches the Court for impleadment. In the latter case, the transferee *pendente lite* cannot claim absolute right to be impleaded, urged Mr. Sanglikar. To buttress this submission, Mr. Sanglikar placed a strong reliance on the judgment of the Supreme Court in the case of Bibi Zubaida Khatoon V/s. Nabi Hassan Saheb and Anr.¹, wherein the following observations were made :

“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

1 AIR 2004 SC 173

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 :-

“Section 52 of the Transfer of Property Act envisages that :-

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

(emphasis supplied)

11. Reliance placed by Mr. Sanglikar on the aforesaid judgment is required to be appreciated in the backdrop of the facts in which the aforesaid observations were made.

12. I find it rather difficult to accede to the submission of Mr. Sanglikar that a party who acquires interest in the subject matter of the suit during the pendency of the suit, without obtaining leave of the Court, cannot seek impleadment. Under Order XXII Rule 10 of the Code of Civil Procedure, in a

case of assignment, creation and devolution of any interest during the pendency of the suit, the suit may, by leave of the Court, be continued by or against a person upon whom such interest has come or devolved. Even dehors the provisions contained in Order 1 Rule 10 of the Code, a party can be added to a proceeding in the event of the devolution of interest envisaged by Order XXII Rule 10 of the Code. In fact, the position of a person on whom any interest has devolved on account of transfer during the pendency of the suit is considered to be akin to the position of an heir or legatee of a party who dies during the pendency of a suit.

13. A useful reference in this context can be made to the decision of the Supreme Court in the case of **Khemchand Shankar Choudhari V/s. Vishnu Hari Patil and Ors.**² wherein the following observations were made :

“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

² (1983) 1 SCC 18

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.

(emphasis supplied)

14. The aforesaid decision in the case of Bibi Zubaida Khatoon (supra), was considered and explained by the Supreme Court in a recent pronouncement in the case of Yogesh Goyanka V/s.Govind and Ors.³. The Supreme Court held that, the only principle that emerges from the judgment in the case of Bibi Zubaida Khatoon (supra) was that the transferee pendente lite cannot seek impleadment as a matter of right. However, Bibi Zubaida Khatoon (supra), does not place a bar on impleadment of a transferee who purchases the property without seeking leave of the Court. The observations in paragraph No.18 of the judgment in the case of Yogesh Goyanka (supra), make the position absolutely clear. They read as under :

3 (2024) 7 SCC 524

“18. Similarly, we also find fault with the order of the ADJ and its misplaced reliance on Bibi Zubaida (supra). The only principle emerging from the judgment of this Court in Bibi Zubaida (supra) is that transferees pendente lite cannot seek impleadment as a matter of right and to that extent, we agree with the ADJ. However, Bibi Zubaida (supra) does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court. The decision of the Court in Bibi Zubaida (supra) turns on its own facts; the Court rejected the application for joinder therein noting that the underlying suit was pending since 1983 and upheld the finding of the Trial Court that the subsequent purchaser was not bona fide and attempted to complicate and delay the underlying suit. Therefore, the judgment in Bibi Zubaida (supra), being distinguishable on facts, does not assist the Respondents herein.”

15. The aforesaid being the position in law, the submission of Mr. Sanglikar that since the applicant acquired interest in the suit property during the pendency of the proceeding without obtaining the leave of the Court, it does not deserve to be impleaded as a party to the proceeding, does not merit acceptance. In any event, the Revision Applicant, who is in the carriage of the proceedings, has no objection to implead the applicant. The dispute, inter

se, the predecessor in title of the applicant and Respondent No.2 need not weigh with the Court in permitting the applicant to substitute it for and stead of Respondent Nos.1(a) and 1(c).

16. I am, therefore, inclined to allow the Application.

17. Hence, the following order :

ORDER

(i) The Interim Application stands allowed.

(ii) Original Applicant is directed to amend the Application in accordance with the Schedule of Amendment appended to this Application.

(iii) Necessary amendment be carried out within a period of three weeks.

(iv) CRA No.559 of 2010 be included in the list of final hearing matters, in the week commencing from 11th August 2025.

(v) Interim Application stands disposed.

(N.J.JAMADAR, J.)