

**IN THE COURT OF SMALL CAUSES AT BOMBAY
(BANDRA BRANCH)
ORDER BELOW EXHIBIT- 30
IN
MESNE PROFITS PROCEEDINGS NO. 4 OF 2010
IN
T.E. & R SUIT NO. 32/35 OF 2001**

**MR. KANTILAL CHAMPALAL KOTHARI
& ORS**

...PLAINTIFFS

VERSUS

**LARSEN AND TOURBO LIMITED
& ORS**

..DEFENDANTS

AND

PLS TECHNOLOGIES PRIVATE LIMITED

..APPLICANTS

S. Joshi and Anand Poojari , Ld. Advocates for the applicants
M. A. Chandan Ld. Advocate for plaintiffs.
Manilal Kher Ambalal & Co Ld. Advocate for Defendant No. 1

Coram:- V. R. Jagdale, Judge
Court Room No. 32
26th September, 2014

ORAL ORDER

1. The present application is filed by the applicants for impleading it as party to the present proceeding. It is contended by the applicants that deceased defendant No. 2 was co-owner and had undivided share to the extent of one half in the suit property. Pending the hearing of the above application, applicants have purchased the aforesaid undivided shares by virtue of Registered of

indenture of conveyance /Sale Deed dated 22nd March, 2013. It is further contended by the applicants that on purchasing or acquiring undivided share in the suit property the applicants are also entitled for mesne profits to the extent of its undivided share. Hence, it is necessary to implead the applicants as a necessary party to the proceeding.

2. The plaintiffs have filed their say vide exhibit 32 and denied that applicants have purchased or acquired undivided share of defendant No . 2 and therefore, they are entitled to claim mesne profits to the extent of share of defendant No . 2. It is further denied by the plaintiffs that defendant No. 2 had right to transfer his one half undivided share in favour of the applicants and in pursuant to the transfer applicants have become co-owner of the property to the extent of one half of share in the suit property.
3. It is contended by the plaintiffs that the applicants are neither a necessary party nor a proper party to the present proceedings. It is further contended by the plaintiffs that they are the dominus-litus and they cannot be compelled to implead any party as a necessary party or a proper party to the present proceedings. It is further contended by the plaintiffs that the defendant No. 2 did not have any right to the sale or dispose off his share to the applicants and applicants have no right in the suit property. It is further contended by the plaintiffs that there is no valid transfer in favour of the applicants and in pursuant of the oral family arrangement the defendant No. 2 only had a right to receive an amount as mentioned

in the document upon disposal of the property. It is further contended by the plaintiffs that the defendant No. 1 and applicants are in collusion with each other and have filed present application with the intention to prolong the hearing of the main application. The application being false and frivolous be rejected.

4. The defendant No.1 had also filed its say vide Exhibit 33 and contended that applicants are necessary party to the present proceeding because in pursuant to Deed of Conveyance dated 22nd March, 2013, applicants had acquired undivided one half of share of defendant No. 2. It is further contended by the defendant No. 1 that if the applicants are impleaded as party , it will assist the court in deciding the mesne profits proceeding and it will also have direct bearing on the claim of mesne profits made by the plaintiffs against the defendant No. 1 in respect of the suit property. Hence, it is prayed that the application be allowed.
5. The applicants have filed rejoinder Exhibit 36 and contended that they are entitled for undivided share in the suit property and for quantum of mesne profit which is to be awarded. They are necessary and proper party to the aforesaid proceeding. Hence, application be allowed.
6. The learned counsel for the applicants has submitted that the applicants have purchased one half undivided share of the defendant No. 2 by virtue of Indenture of Conveyance /Sale Deed dated 22nd March, 2013 . In pursuant to aforesaid document, right, title and

interest in respect of the one half undivided portion of the suit property devolved upon the applicants. As the applicants have substantial interest in the suit property, they are necessary party to the application. He has further submitted that even though, the aforesaid transaction has been entered into during the pendency of the litigation, they can be impleaded as a necessary party so as to enable to protect their interest.

7. In support of his contention the learned counsel for the applicants has relied upon following citations.

1. ***Satyanaryan S/o Swaroopnarayan Khandelwal V/s Chandrakalabai w/o Ramssahay Khandelwal and Ors***, wherein it is observed that, under Order, 1, Rule 10 and Section 52 of Transfer of Property Act, impleadment of parties, Entitlement -transferee pendente lite can be added as a proper party to protect his interest."

2. ***Amit Kumar Shaw and Anr V/s Farida Khatoon and Anr (2005) 11 Supreme Court Cases 403***, wherein it is held that object of power under who may be joined necessary and proper parties, question to be addressed by court. State (s) of proceedings at which parties may be joined. Held power to strike out or join parties may be exercised at any stage of the proceedings. Question to be addressed by court is whether an enforceable right of a person may be affected if he is not joined."

3. ***Jawaharlal V/s Smt. Saraswatibai Babulal Joshi and Ors. AIR 1987 Bombay 276*** wherein it is held that, " No detailed enquiry at

the stage of granting leave under Order 22, Rule 10 is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution and the question about the existence and validity of the assignment or devolution can be considered at the trial of the suit on merits."

8. The learned counsel for the defendant No.1 has submitted that defendant No.2 was co-owner of the suit property. The defendant no. 2 has sold his one half undivided share out of the suit property to the applicants. As the plaintiffs have sought relief of mesne profits , it is necessary to implead applicants as a necessary party to the suit, so that mesne profits if any awarded can be apportioned in between the plaintiffs and the applicants. If applicants are impleaded as a party to the application , it will curtail multiplicity of litigation. Hence, application be allowed.
9. On the contrary, learned counsel for the plaintiffs has submitted that the defendant No. 1 and applicants are in collusion. The transaction which has been effected in between defendant No. 2 and applicants is not valid. The defendant No. 2 was not entitled to dispose off his share and is also not entitled to receive any amount . He has further submitted that the plaintiffs are dominus litus and they cannot be compelled to implead the applicants as a party to the suit. The applicants are not necessary party to the suit . Hence, application be rejected.

10. On perusal of Indenture of Conveyance dated 22nd March, 2013, it appears that defendant No. 2 has sold his undivided one half share out of the suit property to the extent of Rs. 35 lakhs and accordingly, all the rights, title and interest of the undivided share has devolved upon applicants, which has necessitated the applicants to file the present application. Even though, the aforesaid transaction has been executed during the pendency of the aforesaid application, but in the first citation relied on by the applicants, it is laid down that transferee pendente lite can be added as a party to protect his interest. So also in the second citation, it is laid down at the time of adding party, no detailed inquiry is required and the court has to prima facie satisfy itself that the party which ought to be impleaded is necessary and proper party.

11. Even though, the learned counsel for the plaintiffs has submitted that the transaction effected in between the defendant No.2 and the applicants is not valid and therefore, they are not entitled for any amount or mesne profits to be awarded. But at this juncture, without giving opportunity to the applicants, it cannot be said as to whether the transaction effected in between the defendant No.2 and the applicants is valid or not. If the plaintiffs prove that the transaction effected in between the defendant No.2 and the applicants is not valid then applicants will not be entitled to any relief and have to suffer necessary consequences ensuing thereof. But at the threshold itself the applicants cannot be deprived of the opportunity to prove that they have also right in the mesne profits, if

any awarded.

12. In my opinion, in view of the transaction effected in between the defendant No. 2 and the applicants , the applicants are necessary party to the application and application cannot be completely and effectually adjudicated without the presence of the applicants. Hence, I am inclined to pass the following order.

ORDER

1. Application is allowed.
2. The plaintiffs are directed to implead the applicants in the array of defendants and carry out amendment to that effect within 14 days from the date of the order.
3. The plaintiffs are also directed to file copy of amended application on next date.
4. No order as to costs.

Dt:-26.09.2014

(V. R. Jagdale)
Judge
C.R. No. 32

Order dictated on :-26.09.2014
Order transcribed on :- 26.09.2014
Order checked & Signed on:- 29.09.2014