

Order Below Exh. 265

1) This is an intervention application filed by the applicant Ashish Eknath Kanchan under Order 1 Rule 10 of the Code of the Civil Procedure, 1908 (for short CPC) seeking his and other three persons impleadment in the present suit as defendants. It is the contention of the applicant that the property which is the subject matter of the present suit has been purchased by him and other 3 persons name Dilip Rajaram Dhone, Shivaji Baburao Nagroje, Shivaji Maruti Bhadne vide registered sale deed dated 15/10/2009 executed in their favor by the defendant No.2 to 5 for valuable consideration of Rs.1,20,00,000/- (One Corer twenty lacs Rupees). Hence, it is the contention of the applicant that he and other purchasers may be impleaded in the present suit as the defendants.

2) The intervention application so filed by the applicant was opposed by the plaintiff by filing say vide Exh. 269. According to the plaintiff, the present application has been filed by only Ashish Eknath Kanchan and he alone signed over the application. The other three purchasers did not sign over the intervention application and they have not filed their affidavits along with the application. Hence, on this technical ground application is liable to be rejected. It is further contended that the plaintiff is the *dominus litis* of the suit and the present sale transaction allegedly took place during pendency of the suit. Hence, as per the rule of *lis pendens* the decision of the Court should be binding to the present applicant. Therefore, he is not the

necessary party to the present suit. It is further contended that the present suit has been filed in the year 2002 and the alleged sale transaction took place on 12/10/2009. While entering into the sale transaction, the applicant and the other purchasers knew about the pendency of the present suit in the Court. The recitals of the said sale deed show that there is mention of the pendency of the present suit between the plaintiff and defendants. As the applicant knew about the pendency of the present suit since the date of sale transaction, he ought to have come earlier before this court to seek him party to the suit. As the applicant did not explain the inordinate delay for making this application, he has no right to implead himself in the present suit. It is further contended that there are other proceedings also pending in the Court regarding the subject matter of this suit. However, the applicant did not appear in that matters and make application to implead him in the said proceedings. It is further contended that the defendant Nos. 2 to 5 are having only 1/6th share in the suit properties. Hence, the applicant could not purchase entire suit properties from them. The present plaintiff has already sent notice to the applicant and others through her advocate. It is further contended that the plaintiff is a protected tenant of the defendant Nos. 1 to 5 and therefore present suit is filed against the defendants for injunction simpliciter. Hence, the sale deed in question is not binding upon the plaintiff as per the provisions of Maharashtra Agriculture and Tenancy Land Act, 1948. Thus, it is prayed that the application may be rejected with costs.

3) The defendants have filed their say Vide Exh-276 and strongly objected this application. It is submitted that though they executed sale deed in favour of the applicant and other three but the possession of suit properties were not parted to them. The applicant did not give entire consideration amount of the said transaction to them. The applicant knew about the pendency of the present suit despite he purchased the suit properties from them. It is further contended that the cause of action arose only against the present defendants. There is no cause of action arose against the applicant. Hence, the applicant is not necessary party to the present suit. It is further contended that if the applicant is implead in the present suit, there is every likelihood that complications will arise and matter will be protracted. Hence, it is prayed that the application may be rejected with costs.

4) I have perused application, say filed by the plaintiff and defendants as well as documents filed on record. I have gone through the written notes of argument filed by the plaintiff and defendants vide Exh.277 and Exh.284 respectively. Heard Learned Advocate for the applicants, plaintiff and defendants.

5) The foremost, *interalia*, point raised by the plaintiff is that the present application has been filed by only Ashish Eknath Kanchan and he alone signed over the application. The other three purchasers did not sign over the intervention application and they have not filed their affidavits along with the application. Upon

perusal of record shows that the Vakil-Patra of other three applicants has been filed on record by the same advocate who is representing the applicant Ashish Eknath Kanchan. Thus, it cannot be said the other three applicants have not applied for their impleadment. Thus, this application shall be considered to be filed by all applicants. Hence, the above objection raised by the plaintiff being sheer technical in nature stands negated.

6) It is admitted position that on 12/10/2009, the applicant and other three got executed registered sale deed of the suit properties from the defendant No.2 to 5. Thus, the alleged transaction took place during pendency of the present suit. As such the doctrine of *lis pendens* applies to the said sale transaction. In the case of **Bibi Zubaida Khatoon V/s Nabi Hassan Saheb [(2004) 1 SCC 191]**, Hon'ble Apex Court held that the transferee pendente lite without leave of the court cannot as of right seek impleadment as a party in the suit which are long pending. Thus, it is crystal clear that the transferee pendente lite is not entitled as of right to be made as party to the suit, though the Court has a discretion to make him a party. Further, it is well settled law that the transferee *pendente lite* can be added as proper party if his interest in the subject matter of the suit is substantial and not just peripheral.

7) In the instant case, the applicants have definitely having an interest in the subject property since they have admittedly purchased the said property by registered sale deed for valuable consideration of

Rs.1,20,00,000/- (Rs. One Corer twenty lacs). It is well settle law that the object of sub rule (2) of Rule 10 of Order 1 of Civil Procedure Code is to bring before the Court all the persons who are parties to the dispute relating to one subject matter so that the disputes may all be determined at the same time without delay, inconvenience and expense of separate actions so that the Court may be in a position to adjudicate upon and settle all the questions involved in the suit and dispute between the parties attain finality. It been held by the Honourable Apex Court in the case of **Sumatibai and others Vs Paras Finance Co[(2007)10 SCC 82]**, if a party can show a fair semblance of title or interest in the property which is the subject matter of the suit, he can certainly file an application for impleadment and ought to be impleaded being a necessary party.

8) In the case of **Thomson Press (India) Limited V/s Nanak Builders and Investors Private Limited and Others [(2013) 5 Supreme Court Cases 397]** the Hon'ble Supreme Court has considered the scope of both Section 52 of the Transfer of Property Act, 1882, as well as the Order 1 Rule 10 of the Code of Civil Procedure. In the said case, the suit was filed for specific performance. In spite of the prohibitory orders passed, there was an alienation by a party to the suit. Even though the purchaser could not be termed as a bona fide purchaser, the Supreme Court, after considering the scope and ambit of Section 52 of the Transfer of Property Act, 1882, and Order 1 Rule 10 of the Civil Procedure Code and Section 19(b) of the Specific Relief Act, 1963, allowed the

application for impleadment sought for. In the instant case, the plaintiff and the defendants have strongly objected that these applicants had knowledge about the pendency of the present suit despite they purchased the suit properties from defendants. The recitals of the sale deed in question themselves demonstrate the said state of affairs. Thus, it can be said at this juncture that the applicants are not bonafide purchasers. Albeit, the applicants are not appeared bonafide purchasers for value without notice, they can be impleaded in the present suit as ratio laid down by Hon'ble Apex Court in the case of Thomson Press (INDIA) Limited (supra). It has been further held by the Apex Court that doctrine of lis pendens does not indeed annul the conveyance or the transfer otherwise, but merely makes it subservient to the rights of the parties to a litigation. The Hon'ble Apex Court held that Section 52 of the Transfer of Property Act, 1882, does not render transfers affected during the pendency of the suit as void and a mere pendency of the suit does not prevent one of the parties from dealing with the property constitute in the subject matter of the suit. On the contrary, it only postulates a condition that the alienation will in no manner affects the rights of the other party to the suit. Further, on the scope of Order 1 Rule 10, it has been held that a transferee pendente lite can be added as a party to the suit, where a transfer is effected, the transferor would lose all his rights and interest in the litigation post transfer. Therefore, it is imperative that the transferee will have to be allowed to step into the shoes of the transferor and prosecute the case in his place. The duty of the Civil Court is to conclude and settle the dispute between the

parties instead of driving them to multiply the proceedings. It would be proper to implead all the parties. It cannot be said that a transferee has got no interest in the suit in which the transferor is a party.

9) In the case of **Amit Kumar Shaw v. Farida Khatoon [(2005) 11 SCC 403]**, the Honble Apex 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.* In the present suit, upon perusal of record shows that the plaintiff has moved application vide Exh-268 for abandoning the suit against the defendant No.6 to 14 contending that there had compromise taken place among plaintiff and defendant No.3 to 5. These state of affairs show that the defendants now being not interested in the suit, tried to settle the dispute with the plaintiff ignoring interest of the purchasers pendente lite. As discussed supra, the applicants have purchased entire suit property for valuable consideration of Rs.1,20,00,000/-, so obviously their interest is substantial and not just peripheral. Thus, to avoid such situations and multiplicity of the proceedings, applicants being the transferee pendente lite are entitled to be added as parties to the suit as they are necessary and proper

parties to the suit whose presence in the Court is essential for effective determination of the issues involved in the suit. In the result, application deserves to be allowed with following directions. Hence, the following order;

ORDER

- 1) Application Exh-265 is allowed subject to costs of Rs.3000/- (rupees three thousand) to be paid to the plaintiff by the applicants.
- 2) The applicants No. 1 to 4 are joined as defendants to the suit.
- 3) The plaintiff to carryout requisite amendments in the plaint within 15 days from today.
- 4) The applicants shall file their written statements, if any, within 30 days from today.

Date : 06/06/2018.

(R.H. Nathani)
Civil Judge (J.D.), Bhore, Dist. Pune.

"I affirm that the contents of this P.D.F file Order are same word for word as per original Order.

Name of the Steno : Shri.V.G.Fulari

Court Name : Shri. R.H. Nathani

J.M.F.C., Bhor, Dist. Pune.

Date : 06/06/2018

Order signed by presiding officer on : 06/06/2018

Order uploaded on : 13/06/2018."