


MHRG040029602016 	Ashok Hari alies Haribhau Madhvi Vs. Kamal Baccha Ali & Ors.
---	---

ORDER BELOW EXH. 36 IN Spl.C.S.NO.316/2017

The present application is filed by plaintiff under Order 1 Rule 10 of The Code of Civil Procedure, 1908. (hereinafter to be referred as The CPC for the sake of brevity).

2. The present suit is filed for cancellation of sale deed, permanent injunction and other reliefs.

3. The plaintiff is contending that the plaintiff has recently obtained a copy of their CIDCO file bearing No. 994 from the CIDCO office, pursuant to the provisions of the Right to Information Act. Based on this, the plaintiff has received information indicating that while the present suit remains pending defendant no. 2 has entered into transactions regarding the suit property with M/s. Varniraj Group, represented by partners Mr. Nilesh Harji Bhatasara, Mr. Bhavan Devji Hathiyani, and Mr. Rupashi Raghavji Barsania; furthermore, defendant no. 2 is currently making efforts to transfer the said suit property for the benefit of the aforementioned individuals. To this end, defendant no. 2 and M/s. Varniraj Group have submitted various documents to the CIDCO office. In light of the information received as stated above, it has become imperative

for the plaintiff to implead M/s. Varniraj Group as a party to the present suit. Therefore, the plaintiff hereby requests that permission be granted to include the parties specified in clause 5 of this application namely, defendant no. 8 through defendant nos. 8/1 to 8/3 as defendants in the present suit.

4. The defendant nos. 2/1 to 2/5 have replied to the present application contending that, the plaintiff has transferred the suit property to defendant nos. 2/1 to 2/5 by way of a registered tripartite agreement. Furthermore, defendant nos. 2/1 to 2/5 are bona fide purchasers of the suit property. A development agreement regarding the suit property was executed between the plaintiff and defendant no. 2 on 23rd January, 2016, and the plaintiff has sought the cancellation of the said agreement. Moreover, the plaintiff transferred the suit property via a registered tripartite agreement only after having accepted the entire financial consideration in exchange for the said property. Consequently, it is not necessary to implead the present defendants as necessary parties to this suit. Therefore, the defendants respectfully request that the present application be rejected.

5. The proposed defendants have replied to the present application contending that, the plaintiffs application is misconceived, lacks merit and is an attempt to complicate the proceedings. The plaintiff has failed to show how the proposed defendants are necessary and proper parties to the original cause of action involving alleged fraud by defendant nos. 1 & 2 and on this

ground. There is no privity of contract between the plaintiff and the proposed defendants. Any grievance the plaintiff has regarding fraud or non payment of consideration is strictly between the plaintiff and defendant nos. 1 & 2. The tripartite agreement dated 03/01/2017 is signed and executed by the plaintiff before the Registrar and therefore there cannot be any fraud being played upon the plaintiff and therefore the proposed defendant is neither a necessary or a proper party. The plaintiff has not shown any clear cause of action against the proposed defendant and on this ground amongst others the present application is liable to be dismissed with costs.

6. Heard Ld. Advocate for the plaintiffs, the defendants the proposed defendant. On perusal of the application, the say filed on the application and the documents on record, following points arise for determination, together with my findings thereon for the reasons recorded as under -

Sr. No.	POINTS	FINDING
1.	Whether the plaintiff who has filed an application under Order I Rule 10 of the Code of Civil Procedure is entitled to the relief and add proposed defendant nos. 8 through 8/1 to 8/3 to be a parties to the present suit as claimed?	Yes
2.	What Order ?	As per the final order.

REASONS

AS TO POINT NO. 1:

7. The present application is filed by the plaintiff seeking to implead proposed defendants as parties to the present suit under Order I Rule 10 of the Code of Civil procedure, 1908. The said Rule provides as under:

“Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

The said Rule also provides as under:

“Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”

8. Sub-rule (2) of Rule 10 empowers the Court to add any person as a party to the suit on either of the two grounds:

- i. Such person ought to have been joined as a plaintiff or or defendant, and is not so joined;
or*
- ii. Without his presence, the question involved in the suit cannot be completely decided.*

9. The purpose of this provision is to bring before the Court, at the same time, all the persons interested in the dispute so that the dispute may be finally determined at the same time in the presence of all the parties without any delay, inconvenience and expense of several actions and trials and inconclusive adjudications.

10. In relation to the present case, considering the first ground mentioned above, the application has been filed by plaintiff seeking the permission of the Court to make necessary amendments to add proposed defendants as the defendants to the present suit. It is the contention of the plaintiff that if the proposed defendants are not joined as a parties to the suit, the question involved in this suit would not be completely decided.

11. Two considerations especially will have to be kept in mind before exercising powers, namely, (i) the plaintiff is a *dominus litis*. He is the best judge of his interest. It is, therefore, for him to choose his opponent from whom he claims relief and, *normally*, the Court should not compel him to fight against a person whom he does not want to fight and from whom he claims no relief; and (ii) if the Court is satisfied that the presence of a particular person is necessary to effectively and completely adjudicate all the disputes between the

parties, irrespective of the wishes of the plaintiff, the Court may exercise the power and join a person as party to the suit.

12. In *Anil Kumar V. Shivnath, 1995 SCC (3) 147*, considering the provisions of Order 1 Rule 10 (2), the Supreme Court observed,

“Though the Court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the Court must be satisfied that the presence of such party to be added, would be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.....The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

13. Taking into consideration the object which is set forth by the Hon'ble Apex Court and various guidelines and principles which have emerged by the various decisions of the Hon'ble Apex Court, it is necessary that, the nexus be made so as to built a bridge bring so concrete leaving no gaps so as to strengthen it strong enough leaving no leakage.

14. From the relevant provision of the Code and various decisions of the Apex Court, the following principles regarding addition and deletion of parties to suit emerge. Some of the principles are as follows.

- A question of joinder of parties is a matter of procedure and not of substantive right.
- The primary object of joinder of parties is to ensure that all suits are decided finally and conclusively on merits in the presence of all parties.
- A plaintiff is a *dominus litus* and has a right to choose his adversary against whom he wants to fight and from whom he seeks relief. It is not province of a Court of law to interfere with that right.
- An order of addition, deletion, substitution or transportation can be made either on an application by a party or by a Court *suo motu*.
- Where a defendant is added, the plaint should be amended.

15. The present application has been filed by plaintiff and hence it is necessary for them to put forth reasons for adding proposed defendants as the defendants to the present suit. The Hon'ble Apex Court has laid down the principles that the question of joinder parties is matter of procedure and not a substantive right.

16. In view of the object set for joinder of parties it is necessary to put the factual matrix in ambit of the provisions of

Order 1 Rule 10 of The CPC. Reverting to the prayer clause mentioned in the suit the plaintiff seeks for cancellation of sale deed, permanent injunction and other reliefs against the defendants.

17. On perusal of the record it appears that the Ld Advocate of plaintiff vide exh. 38 has filed on record the application for transfer by tripartite which is in between M/s. Ganesh Enterprises numbering defendant no. 2/1 to 2/5. They have also filed on record the tripartite agreement between the proposed defendants and defendant no. 2 with regards to the suit property. The said agreement is dated 09/10/2025. It appears that certain transactions have been made after the institution of the present suit i.e. 2017. It is *prima facie* clear that there has been transfer of suit property during the pendency of the suit which in the present suit needs to be considered for deciding the present application in hand.

18. The act done by defendant No. 2 after the pendency of the suit brings into picture the concept of *Lis Pendens* as provided in Transfer of Property Act. This doctrine has been derived from a latin magazine "*Ut pendent nihil innovetur*" which means that, during the pendency of any litigation nothing should be changed. The principle embodying the said doctrine is that the subject matter of a suit should not be transferred to a third party during the pendency of the suit.

19. Section 52 of the Transfer of Property Act, 1882 captures the doctrine of *Lis Pendens*. The Section essentially prohibits alienation of immovable property during the pendency of the suit.

**Application of Section 52 of Transfer of Property Act-
Conditions to be satisfied:-**

The Hon'ble Supreme Court in a three Judge Bench in Dev Raj Dogra and others V. Gyan Chand Jain and others AIR 1981 SC 981 constructed the meaning of Section 52 of the Transfer of Property Act and laid down following conditions:

- 1. A suit or a proceeding in which any right to immovable property is directly and specifically in question must be pending;*
- 2. The suit or proceeding should be pending in a Court of competent jurisdiction;*
- 3. The suit or the proceeding should not be a collusive one;*
- 4. Litigation must be one in which right to immovable property is directly and specifically in question;*
- 5. Any transfer of such immovable property or any dealing with such property during the pendency of the suit is prohibited except under the authority of Court, if such transfer or otherwise dealing with the property by any party to the suit or proceeding affects the right of any other party to the suit or proceeding under any order or decree which may*

be passed in the said suit or proceeding.

Non-Applicability of Doctrine of Lis Pendens

Lis Pendens is not applicable in every case. There are certain instances wherein this doctrine does not apply:

- *A sale made by the mortgagee in the exercise of the power as conferred by the mortgage deed.*
- *In matters of review;*
- *In cases where the transferor is the only party affected;*
- *In cases of friendly suits;*
- *In cases where the proceedings are collusive;*
- *In cases of suits involving pending transfers by a person who is not a party to the suit;*
- *In cases where the property has not been properly described in the plaint;*
- *In cases where the subject matter of rights concerned in the suit and that which are alienated by transfer of different*

20. Considering the ground for non-applicability of doctrine of Lis Pendens neither of them attract to itself the facts as portrayed by the plaintiff in the present application. It would not be appropriate to go into merits of whether or not the doctrine of *Lis*

Pendens is been proved on part of the defendant No. 2. But it is apparent from the record i.e. from the very face of it, it can be seen that the question relates to the right over the immovable property which is directly and specifically in question in the suit which is pending. Where there arises a question as to the subject matter of the suit this itself would be in favour of the plaintiff for getting the present application decided in his favour.

21. In my considered opinion, I find it essential for adding the said proposed defendants as defendants to the present suit as the suit itself is for cancellation of sale deed and permanent injunction etc, in relation to the suit property. It has been shown that, during the pendency of the suit transactions with regards to the suit property was entered into between defendant no. 2 and the proposed defendants. Hence, it is necessary that all the necessary parties be made a party to the suit for effectual adjudication of the case.

22. It is necessary to note that, the plaintiff is *dominus litus* has right to choose his adversary against whom he wants to fight and whom he wants to seek relief. It wouldn't be within the purview of the Court to interfere with the right of the plaintiff of adding and striking of the parties unless and until the Court finds it necessary that the question involved in the suit cannot be completely decided without the presence of such a party. In my view, it would be necessary to add the present proposed defendants to the suit as defendants as the relief claimed by the plaintiff in the present suit would be effectively and completely adjudicated upon.

AS TO POINT NO. 2:

23. Hence, in view of the above authorities and in purview of the guidelines and principles laid down by the Hon'ble Apex Court, I consider it necessary for granting the relief under Order 1 Rule 10 of The CPC making the proposed defendants as defendants in the present suit. Hence, in the light of the above discussion, I proceed to pass following the order.

ORDER

1. Application is allowed.
2. The proposed defendant nos. 8 through 8/1 to 8/3 be added as defendants to the present suit.
3. The plaintiff to carry out the said amendment within 14 days from today.
4. No order as to cost.

Date: 08/04/2026

(Uma Y. Borade-Kapoor)
4thJt. Civil Judge Senior Division,
Panvel.