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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 726/2014

GYAN PRAKASH GUPTA

..... Plaintiff

Through: None.

versus

VIJAY PRAKASH & ORS

..... Defendant

Through: Ms. Reetika Gupta, Adv. for LR's of D-1.
Ms. Seema Singh and Ms. Archana
Gupta, Advocates for D-2 to 11.

CORAM:

MS. DEEPALI SHARMA (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

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05.12.2017

I.A.No. 1112/2015 filed on behalf of M/s Saboori Developers & Promoters Pvt. Ltd. under Order 1 Rule 10 CPC seeking impleadment in the suit as a Defendant

The Plaintiff has filed the instant suit seeking partition of the property bearing no. A-35, Kailash Colony, New Delhi (hereinafter referred to as "Subject Property). The Plaintiff has also sought a decree of permanent injunction restraining the Defendant from interfering in the peaceful possession and occupation of his share in the subject property.

It is stated by the Plaintiff that Plaintiff and Defendant no.1 are real brothers being sons of late Shri Maghanand. It is averred that late Shri Maghanand had five sons and three daughters. Out of which, four of his children have expired and their legal heirs have been brought on record. It is averred that property no. A-35, Kailash colony, New Delhi was purchased on 03.06.1972 vide a registered sale deed out of the sale proceeds of joint property no. N-4, South Extn., which late Shri Maghanand and his sons got by virtue of partition of the joint family properties of late Shri Hardev Sahai, who was the grandfather of late

Shri Maghanand. It is stated that there has been no partition of the subject property which was jointly owned by late Shri Maghanand and his five sons. It is also stated by the Plaintiff that Defendant no.1 has projected himself to be the absolute owner of the ground floor of the subject property on the basis of purported partition deed between late Shri Maghanand and himself. It is stated that the said partition deed allegedly executed in the year 2000 is forged and fabricated.

The instant application has been filed by the Applicant i.e. M/s Saboori Developers & Promoters Pvt. Ltd. seeking impleadment in the suit as a Defendant. It is stated by the Applicant that during his lifetime, late Shri Maghanand executed a WILL on 25.09.2000 wherein it is recorded that upon his death, his five sons including Defendant no.1 will get equal share in his one half (50%) undivided share in the subject property. It is stated that Defendant no.1 who possessed rights in more than half of the undivided share in the subject property executed a sale deed dated 23.04.2014. It is stated that vide the said registered sale deed Defendant no.1 conveyed his 1/4th undivided share (i.e 25% out of his 60% share) in the subject property to the Applicant. A copy of the sale deed has also been placed on record. It is also mentioned therein that Defendant no.1 handed over actual, physical vacant possession of the entire ground floor of the subject property to the Applicant and had also received more than 50% of the agreed sale consideration. It is thus stated that the Applicant is in settled possession of the entire ground floor of the subject property. It is accordingly prayed that since the Applicant has stepped into the shoes of Defendant no.1 in respect of a major portion of share of Defendant no.1 in the subject property, the Applicant is entitled to be impleaded /substituted as a Defendant in the instant suit.

Reply to the above application has been filed by Defendant no.2 to 6 and the Plaintiff. No reply has been filed by Defendant no.1.

It is contended by Plaintiff and Defendant no.2 to 6 that the subject

property is an undivided coparcenery property and the Applicant have in collusion entered into an illegal sale deed on 23.04.2014 which was registered on 19.06.2014 to defeat the rights of other coparceners in the subject property. It is further contended that the instant suit has been filed by the Plaintiff seeking partition of the subject property to which the Applicant is a stranger who cannot be impleaded in the instant suit. It is further stated that the sale deed has been entered into between Applicant and Defendant no.1 and subsequently registered despite the status quo orders passed by the Court.

It is further stated that Defendant no.1 filed suit No. 06/2002 for permanent injunction titled as “Shri Vijay Prakash Vs. Mr. Sanjay Singh & Ors.” before the learned Trial Court in which the Plaintiff, herein was arrayed as Defendant no. 7. It is stated that the said suit was filed seeking permanent injunction against the Defendants restraining them from interfering with the peaceful use and occupation of the entire ground floor of the suit premises. Thereafter, another suit for eviction and damages was filed by Defendant no.1 wherein the Plaintiff herein was arrayed as Defendant no.7. It is stated that on 12.01.2004, both the suits were consolidated for the purpose of recording of evidence. Learned counsel for the Plaintiff has stated that vide order dated 22.01.2002 a status quo order was passed by the learned Trial Court which order was confirmed in Appeal. It is averred that on 12.03.2015, both the above suits filed by Defendant no.1 were dismissed for non-prosecution.

Summons in the present suit were issued to the Defendants on 12.03.2014 and Defendant no.1 entered appearance on 26.05.2014. Subsequently, a status quo order was also passed in the instant suit on 25.07.2014. It is accordingly stated by Plaintiff that the sale deed executed by the Defendant no.1 on 23.04.2014 and registered on 19.06.2014 is hit by the Doctrine of *Lis Pendens* and in teeth of status quo order passed by the learned Trial Court. It is accordingly contended that the Applicant cannot claim any right in the suit property. It is also pleaded

that the sale deed dated 23.04.2014 has been executed between the Applicant and Defendant no.1 in collusion with each other with knowledge of pending suits in the District Courts and the Hon'ble High Court.

Defendant no. 2 to 6 have also filed a reply on the same lines.

It is the contention of the Plaintiff that the Defendant no.1 has sold the suit property to the Applicant despite the injunction order passed by the learned Trial Court and the Hon'ble High Court. In this regard, the Plaintiff has placed on record a photocopy of the order dated 22.01.2002 passed by Senior Civil Judge, Tis Hazari Courts in a suit for Permanent Injunction titled as "Vijay Prakash Vs. Sanjay Singh & Ors." Defendant no.1, herein, was arrayed as Defendant no. 7 in the said suit. In the said order dated 22.01.2002, the Sr. Civil Judge, Delhi has ordered as follows:

....."Admittedly, Plaintiff is in occupation and possession of the residential constructed portion on the ground floor of the property No. A-35, Kailash Colony, New Delhi.

In order to protect the subject matter, I deem it just and proper to direct the parties to maintain status quo with respect to the admitted situations till next date of hearing.".....

The Plaintiff has stated that the said order dated 22.01.2002 was confirmed in appeal. The photocopy of the order dated 17.11.2004 passed by the Court of Sr. Civil Judge, Delhi in the Appeal titled as "Vijay Prakash Vs. Sanjay Singh & Ors." has been placed on record. The said order dated 17.11.2004 passed by the Appellate Court records as follows:

"This appeal is directed against the order of learned Civil Judge dated 19.02.2003 by the learned Civil Judge had dismissed the application of the Plaintiff/appellant under Order XXXIX Rule 1 & 2 r/w Section 151 CPC.

Today, during course of arguments, Advocate of Respondent made a statement that the Respondent be

maintained status quo with respect to property in view of earlier order dated 22.01.2002.

Advocate of Appellant is satisfied with the statement and it is directed to the respondent to be bound by the statement. Accordingly, in view of statement made by the Advocate of Respondent, the present appeal filed by the Appellant stands disposed. Appeal file be consigned to Record Room. TCR be sent back to concern Trial Court.”

In this context, it would be relevant to note the statement of counsel for the respondent recorded before the Appellate Court on 17.11.2004, photocopy of which has also been placed on record.

“Statement of Shri M.D. Andley, Counsel for the Respondent.

Without Oath

It has been agreed by me that the status quo with regard to the property be maintained in view of earlier order dated 22.01.2002. Appeal be disposed off accordingly.”

It is stated by counsel for the Plaintiff that the suits filed by Defendant no.1 before learned Trial Court were dismissed on **12.03.2015**. The Plaintiff has placed on record photocopy of the order passed by Sr. Civil Judge, Tis Hazari in the suits for permanent injunction and another suit for eviction and recovery of damages filed by Defendant no.1 whereby the said suits were dismissed for non-prosecution.

From the aforestated, it appears that the status quo order passed by the Appellate Court was in reference of the order dated 22.01.2002 passed by learned Trial Court whereby the learned Trial Court had directed the parties to maintain status quo with respect to “admitted situations” in context of the possession of the suit property. Prima facie the aforesaid order does not appear to be in context of maintaining status quo with respect to title of the suit property.

It is relevant to note that summons in the instant suit were issued on

12.03.2014 and the Hon'ble Court on 25.07.2014 directed that the status quo with regard to possession of the suit property be maintained by the parties till the next date of hearing. On 25.08.2014, the Hon'ble Court clarified that the status quo with regard to title and possession of the suit property be maintained by the parties.

It is noteworthy that the sale deed was executed by Defendant no.1 in favour of the Applicant on 23.04.2014 and the same was registered on 19.06.2014. The injunction order directing status quo on title and possession was passed on 25.07.2014 i.e. subsequent to execution and registration of the said sale deed. The said sale deed was however executed and registered during the pendency of the instant suit which was instituted in March, 2014.

In this perspective, it is relevant to refer to the decision of Hon'ble Supreme Court in *Dhanlakshmi & Ors. Vs. P.Mohan & Ors.* 2007 (10) SCC 719 wherein the Hon'ble Supreme Court held that the purchaser of the property from the co-sharers during the pendency of the partition suit are necessary and proper parties to the suit. In *T.G. Ashok Kumar Vs. Govindammal JT.* 2010 (13) Supreme Court 319, the Hon'ble Supreme Court has held that the rights of a purchaser in a *pendente lite* sale in a partition suit are subject to the rights declared or recognized in favour of co-sharer/vendor in the decree passed in the partition suit. It was accordingly held that the *pendente lite* sale in a partition suit would be subject to the decree in the partition suit. It is settled law that sale of the suit property during the pendency of the suit is not *void ab initio* and is only subject to the outcome of the final decision in the suit. In *A.K. Chatterjee Vs. Ashok Kumar chatterjee* 2009 (156) DLT 475, the Hon'ble Delhi High Court observed that if the purchaser of a co-sharer of a *pendente lite* sale are not made a party to the suit, it will lead to multiplicity of the suit, which is to be avoided. It is also observed therein that the decision in the suit in the absence of the purchaser to whom the Defendant/co-sharer has conveyed his rights in the property which is the subject matter of the

suit will be no decision at all.

Even if the contention of the Plaintiff that Defendant no.1 has sold the suit property in violation of the injunction order of the Trial Court is taken to be correct, that would still not be an impediment for impleadment of the Applicant in the instant suit. In this connection, it would be relevant to note the decision of the Hon'ble Delhi High Court in *Kamlesh Sharma Vs. Satya Devi & Ors.* 2013 (7) AD Delhi 145 wherein during the pendency of the suit for partition and declaration, Defendant No.1 executed a sale deed in favour of a purchaser in teeth of the directions of the Hon'ble Division Bench. The Hon'ble Court allowed the impleadment of such a purchaser holding that the purchaser was a necessary and proper party to the suit and that in her absence an effective decree cannot be passed.

Significantly, in *Thomson Press (India) Ltd. v Nanak Builders and Investors Pvt. Ltd. & Ors.* AIR2013SC2389 the Hon'ble Supreme Court has observed as follows:

" 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."(emphasis supplied)

Accordingly in the event a property is sold by a co-sharer in teeth of the *status quo* orders passed the court, that does not render the transfer ineffective. The contention of the Plaintiff in this regard is therefore not tenable. Viewed in this light, the Applicant M/s Saboori Developers & Promoters Pvt. Ltd. who has

purchased the share of Defendant no.1 in the subject property during the pendency of the instant suit and purportedly in breach of the injunction order would be a person whose presence would be necessary for effective and complete adjudication of the issues involved in the instant suit. Moreover, the Applicant having acquired interest in the subject property from Defendant no.1 would be vitally interested in the present litigation and would be affected by any order passed in the instant proceedings. Accordingly, the Applicant is liable to be joined as a party to the instant suit to enable him to protect his interest in the subject property and for passing of an effective decree in the suit.

In view of the aforesaid, the application under Order 1 Rule 10 CPC filed by the Applicant is allowed.

Let the amended memo of parties be filed within two weeks.

IA stands disposed of.

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The Applicant M/s Saboori Developers & Promoters Pvt. Ltd. is impleaded as Defendant in the suit.

Let the written statement be filed by the newly impleaded Defendant within four weeks with advance copy.

Replication thereto be filed within two weeks thereafter.

Re-notify the matter for completion of pleadings on **24th January, 2018**

**DEEPALI SHARMA (DHJS)
JOINT REGISTRAR (JUDICIAL)**

DECEMBER 05, 2017/nk