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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 1286/2012 & IA. 5115/2017

MANU KHURANA AND OTHERS ..... Plaintiffs

Through: Mr. C.M. Gopal, Adv.

versus

MADHU CHAWLA AND OTHERS ..... Defendants

Through: Mr. Suryakant Singla and Ms. Rimjhim Naudiyal, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% 11.03.2020

<u>IA. 5115/2017</u>

1. This is an application filed by Smt. Reeta Chawla, Under Order XXII Rule 10 read with Order 1 Rule 10 CPC with the following prayers:

> *"In the premises it is most respectfully prayed that the Hon'ble Court may be pleased to*
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> *i. allow the application, implead the applicant as one of the defendants and thereafter continue the suit in accordance with law;*
>
> *ii. pass such other and further orders as may be deemed just and proper in the facts and circumstances of the case.*

2. It is the case of the applicant in the application that the aforesaid suit pertains to property bearing K-134, Kirti Nagar, New Delhi. The reliefs sought for in the suit are for declaration, cancellation of sale deeds dated September 2, 2011 and November 18, 2011, partition of the said property and permanent and mandatory injunction with consequential relief.

3. It is the submission of Mr. Suryakant Singla, learned counsel appearing for the applicant that four brothers namely (1) Rishi Lal (2) Om Parkash (3) Ved Prakash Khurana and (4) Dayanand Khurana all sons of late Dharam Chand Khurana purchased a plot of land admeasuring 285 sq. yds being municipal No. K-134, Kirti Nagar, New Delhi vide registered sale deed dated April 21, 1964 and constructed a residential house thereon. They were the joint owners thereof to the extent $^{1}/_{4}{}^{th}$ undivided share each. He states, Om Prakash Khurana having $^{1}/_{4}{}^{th}$ undivided share in the property died on February 3, 2008 leaving behind the plaintiffs as his legal heirs. Plaintiff nos. 2 and 3 have allegedly relinquished their rights in favour of plaintiff no.1 by a registered relinquishment deed dated December 27, 2012. Hence, plaintiff no.l is stated to have become the owner to the extent of $^{1}/_{4}{}^{th}$ undivided share in the suit property. Similarly, Dayanand Khurana died on November 28, 1995 and his wife Smt. Leela Wati Khurana died on February 17, 2000. Consequently, Smt. Madhu Khurana also known as Smt. Madhu Chawla, legal heir and daughter of the Dayanand Khurana and Smt. Leela Wati Khurana thus became the owner of $^{1}/_{4}{}^{th}$ share in the the suit property. Madhu Khurana sold her $^{1}/_{4}{}^{th}$ undivided share to Rajasavi Estates & Developers Private Limited vide sale deed dated September 2, 2011, which was registered on September 13, 2011.

4. The case of the plaintiff is that Smt. Madhu Khurana @ Madhu Chawla is not the daughter of Dayanand Khurana and Smt. Leela Wati Khurana and as such is not competent to execute the sale deed dated September 2, 2011 and accordingly, cancellation of the sale deed has been sought. He contends that Rajasavi Estates & Developers Private Limited sold $^{1}/_{4}{}^{th}$ undivided share in the suit property to the applicant vide a sale deed

dated March 25, 2014.

5. Rishi Lal Khurana and other co-owner having $^{1}/_{4}{}^{th}$ undivided share died intestate on May 17, 1995 leaving behind Smt. Bimla Khurana, widow, Smt. Ritu Bajaj, daughter and Sh. Sudhir Khurana, son. Smt. Bimla Khurana, also died intestate on February 29, 2004. Thus, their daughter Smt. Ritu Bajaj and son Sh. Sudhir Khurana became the owner to the extent of $^{1}/_{2}{}^{nd}$ of $^{1}/_{4}{}^{th}$ or say 12.5% each undivided share in the property. Sudhir Khurana married Rekha Khurana and had 3 issues Sanya, Nehal and Sarthak. Both Sudhir Khurana and Rehka Khurana died intestate on December 13, 2003 and August 6, 2011 respectively and on their demise, $^{1}/_{8}{}^{th}$ or say 12.5% undivided share in the said property was inherited by their said 3 children. Each one of them Sanya, Nehal and Sarthak became the owner to the extent of 4.1666% undivided share in the suit property. Sanya sold her 4.1666% undivided share in the suit property to Rajasavi Estates & Developers Private Limited vide sale deed registered on April 18, 2012. Rajasavi Estates & Developers Private Limited further sold 4.1666% undivided share in the suit property to the applicant vide sale deed registered on April 29, 2014. Similarly, Nehal sold her 4.1666% undivided share in the suit property to the applicant vide sale deed registered on April 18, 2016. Ritu Bajaj, also sold her 12.5% undivided share in the suit property to defendant No.2 herein vide sale deed dated November 18, 2011. Cancellation of the sale deed has been sought by the plaintiff.

6. Mr. Singla states, defendant no.2 further sold 12.5% undivided share in the suit property to the applicant vide a sale deed dated April 29, 2014. It is his submission that the applicant thus became the owner of 45.832% undivided share in the suit property and accordingly, she seeks her

impleadment. In support of his submission, Mr. Singla had relied upon the following three judgments:

1. ***Khemchand Shakar Choudhari and Anr. v. Vishnu Hari Patil and Ors. (1983) 1 SCC 18***

2. ***Raj Kumar v. Sardari Lal and Ors. (2004) 2 SCC 601***

3. ***Rajinder Kumar Gupta and Anr. v. Sanjeev Jain and Ors. 2014 (207) DLT 667***

7. Learned counsel for the plaintiff opposes the application on the ground that applicant has no right to purchase the portions of the property during the pendency of the Suit in view of Section 52 of the Transfer of Properties Act. That apart, similar application was dealt by the learned Joint Registrar on December 19, 2016 while considering IA 9457/2016 under Order I Rule 10 CPC moved by defendant nos. 7 and 10 seeking impleadment of the applicant as a party to the suit. Hence, the present application shall be hit by principle of res-judicata. These submissions are controverted by Mr. Singla stating that the purpose of Section 52 of the Transfer of Property Act is that by alienating the disputed property during the pendency of litigation, the defenndant cannot deprive successful plaintiff of the fruits of litigation. He states, IA. 9457/2016 decided by learned Joint Registrar was filed under Order I Rule 10 and not under Order XXII Rule 10. According to him, under Order I Rule 10, the Court has the discretion to join any person to the suit, whose presence the Court considers necessary in order to enable it to efficiently and completely adjudicate upon and settle all the questions involved in the suit. Moreover, Order XXII Rule 10 deals with procedure in case of assignment before the final order in suit.

8. In substance, it is his submission, that the applicant is a transferee pendente lite and is the owner to the extent of 45.832% undivided share in the property. The defendant No.2 having sold its undivided share to the applicant is now left with no interest in the suit property. Defendant no.2 has been proceeded ex-parte, which clearly demonstrates that the defendant no.2 shall not take care of the interest of the applicant herein. In fact, Mr. Singla states that the applicant is the representative in interest of the parties, from whom she has acquired that interest and therefore has a right to be impleaded and heard. He has drawn my attention to the Judgment of the Supreme Court in the case of ***Raj Kumar (Supra)***, more specifically Para 10, which is reproduced as under:

> *"The law laid down by a four-Judge Bench of this Court in Saila Bala Dassi v. Nirmala Sundari Dassi is apt for resolving the issue arising for decision herein. A tansferee of property from defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order 22 Rule 10 CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22 Rule 10. In an appeal preferred by such transferee, this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order 22 Rule 10 CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further, the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in Order 22 Rule 10. Whoever is entitled to be but has not been brought on record under Order 22 Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the Code. A person having acquired an interest in suit property during the pendency of the*

suit and seeking to be brought on record at the stage of the appeal can do so by reference to section 146 CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that being a purchaser pendente lite, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights."

9. That apart, he has also relied upon the judgment of the Coordinate Bench of this Court in the case of ***Rajinder Kumar Gupta and Anr. (Supra)***, more specifically Para 15 (iv), (v) and (vi), which are reproduced as under:

15. After having gone through the pleadings and the documents placed on record, I am of the considered view that the impugned order suffers from infirmity and the same is liable to be set-aside on the following reasons:-

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(iv) Order XXII Rule 10 CPC specifically provides that in case of an assignment, creation or devolution of an interest, during the pendency of the suit, the suit may be continued by or against the person to or upon whom such interest has come or devolved, which is the case of the petitioners.

(v) The petitioners are not disputing about the principles enshrined in Section 52 of the Transfer of Property Act and in fact, they are seeking their impleadment as defendants in the suit and are not claiming any immunity from the vigours of Section 52 of the Act. The learned trial Court did not exercise its jurisdiction by not appreciating the provisions of Order XXII Rule 10 CPC which specifically provides that in case of an assignment, creation or devolution of an interest, during the pendency of the suit, the suit may be continued by or against the person to or upon whom such interest has come or devolved, which is the case of the petitioners in the present matter.

> *(vi) It is the admitted position in the present case that the only interested parties at present are the petitioners. The respondents No.2 & 3 have admittedly sold the property to the assignees who have ultimately transferred the rights of the property in favour of the petitioners during the pendency of the suit. The respondents No.2 & 3 and other respondents are not contesting the said suit and have lost all their interests or may collude with each other. Therefore, it has become necessary that the petitioners are to be impleaded as defendants in the suit who are the purchasers and are in possession of the suit property. Their specific rights in the property are involved. Thus, they are the proper and necessary parties in the present suit."*

10. Noting the aforesaid position of law, issue which arises for consideration in this application is squarely covered by the dicta of the Supreme Court and the Coordinate Bench of this Court. The applicant is the purchaser of 45.832% undivided share in the suit property during the pendency of the Suit. The previous application was filed by defendant nos. 7 and 9. It is for the first time that the applicant has filed this application for impleadment so that her rights are taken care of. Accordingly, the present application is allowed. Applicant Reeta Chawla is impleaded as a defendant. Amended memo of parties be filed within two weeks. Written statement be filed by Smt. Reeta Chawla within 30 days from today.

List before Joint Registrar for further proceedings on May 14, 2020.

V. KAMESWAR RAO, J

MARCH 11, 2020/*jg*