

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6458 OF 2001

DEVENDRA KUMAR SAREWGEE & OTHERS
nt(s)

Appella

VERSUS

PURBANCHAL ESTATES PVT. LTD. & OTHERS
ent(s)

Respond

(with office report)

WITH CONTEMPT PETITION(C) NO.513/2004 IN CA 6458/2001

Date: 13/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s)

Mr. S.K. Sinha, Adv.

For Respondent(s)

Mr. Sourav Kirpal, Adv.

No.1

Mr. Ashok Jain, Adv.

Mr. Pankaj Jain, Adv.

Mr. B.K. Jain, Adv.

For R.No.3

Mr. J.L. Gupta, Sr. Adv.

Ms. Asha Nair, Adv.

Ms. Anu Mohla, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeal is dismissed in terms of the signed order. Parties shall bear their own costs.

In view of the order passed today in the main appeal, Contempt Petition has become infructuous and is dismissed as such. Rule discharged.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

Co

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6458 OF 2001

DEVENDRA KUMAR SAREWGEE & OTHERS
)

..APPELLANT(S)

VERSUS

PURBANCHAL ESTATES PVT. LTD. & ORS.
)

..RESPONDENT(S)

WITH

O R D E R

Appellants Nos. 1 to 3 the brothers, Appellant Nos. 4 & 5 the trustees and

respondent No.3 the brother of appellant Nos. 1 to 3 are the joint owners of the

property bearing Plot No.3, Alipur Park Place, in the heart of Calcutta measuring one

Bigha, six Catthas, fourteen chitacks and thirty seven sq. ft. equivalent to 2154.11 sq.

yards having a constructed area approximately 12000 sq. ft. consisting of 24 living

rooms besides bath rooms, kitchen, two garages and servants quarters, hereinafter

referred to as the 'suit property'. The property was given on lease vide registered

Deed of Lease dated 1st February, 1956 to Durgadas Moondhrs, respondent No.2 at a

monthly rental of Rs.700/- w.e.f. 1st March, 1955 for a period of 21 years.

Since Respondent No.2 failed to handover vacant possession of the property

after the expiry of the period of lease to the appellants and respondent No.3, suit being

Title Suit No. 60 of 1980 (subsequently numbered as T.S. No. 45 of 1987) was

instituted seeking recovery of possession from respondent No.2 in the Court of Ist

Subordinate Judge, Alipore, Calcutta.

Respondent No.2 also instituted Title Suit No. 97 of 1980 (subsequently

numbered as T.S. No. 46 of 1987) in the Court of 2nd Assistant District Judge,

Alipore, Calcutta against the appellants and respondent No.3 seeking specific

performance of the purported agreement dated 9th October, 1964 for renewal of the Lease Deed dated 1st February, 1956.

Assistant District Judge, Alipore vide his common judgment dated 14th

December, 1987 decreed the Title Suit No. 45 of 1987 along with mesne profits with interest for the period June 1977 to June, 1980 and further mesne profits subject to disposal of proceedings under Order XX Rule 12 of the Code of Civil Procedure and dismissed the Title Suit No. 46 of 1987 instituted by respondent No.2 seeking decree for specific performance.

Respondent No.2 preferred an appeal before the Calcutta High Court being

FAT No.529 of 1988 (renumbered as FA No.164 of 1989) against the decree of

ejectment passed in Title Suit No. 45 of 1987. He also preferred an appeal in the

High Court being FAT No. 530 of 1988 against the judgment in Title Suit No.46 of

1987 dismissing the suit seeking decree for specific performance. The Division

Bench stayed the execution of the decree of eviction with the direction that the

proceedings under Order XX Rule 12 of the Code of Civil Procedure shall continue.

The Appellants and respondent No.3 filed petition under Order XX Rule 12

of the CPC for an enquiry and determination of mesne profits w.e.f. July, 1980 in

the Court of 2nd Assistant District Judge, Alipore, Calcutta. Memorandum of Cross

Objections vide COT No.2780 of 1988 was filed by the appellants and respondent

No.3 in FA No. 164 of 1989 for mesne profits from 1st July, 1980. Appellant No. 2

Hira Lal Sarawgee sold his undivided share to Purbanchal Estates Pvt. Limited,

respondent No.1 herein.

Respondent No.1 filed an application for being substituted in place of Hira Lal Sarawgee, its vendor, in the two appeals pending in the High Court as well as in the execution petition. The High Court vide order dated 28th April, 1998 declined to implead respondent No.1 as a party in First Appeal No. 164 of 1989 arising from the decree of ejectment against respondent No.2 and ordered his impleadment in F.A.No. 348 of 1995 i.e. the appeal arising from the order of mesne profits. This was perhaps done for the purpose of appeal only.

The Executing Court relying upon the decision of the High Court dated 28th April, 1998 declined to implead respondent No.1 as a party in place of Hiralal Sarawgee, its vendor.

Aggrieved against the order passed by the Executing Court the respondent No.1 filed Revision Application in the High Court being CO No. 644 of 2000 which

has been accepted by the impugned order. The High Court has set aside the order passed by the Executing Court and allowed the application filed by respondent No.1 for impleadment. Accordingly, respondent No.1 was ordered to be impleaded as a party respondent in the execution petition.

Aggrieved against the impugned order of the High Court, the present appeal by grant of special leave has been filed.

This Court after detailed consideration of the case law in Raj Kumar vs.

Sardari Lal & Others reported in (2004) 2 SCC 601 has held that the transferee

pendente lite is treated in the eye of the law as a representative-in-interest of the

judgment-debtor and bound by the decree passed against the judgment-debtor. In

case of an assignment, creation or devolution of any interest during the pendency of

any suit, Order 22 Rule 10 CPC confers a discretion on the court hearing the suit to

grant leave to the person in or upon whom such interest has come to vest or devolve

to be brought on record. Bringing on a *lis pendens* transferee on record is not as of

right but in the discretion of the court.

To the similar effect is the judgment of this Court in Civil Appeal No.

2592 of 2005 decided on April 13, 2005 titled Amit Kumar Shaw & Another vs. Farida

Khatoon & Another reported in JT 2005 (5) SC 20. It has been observed as follows:

"The doctrine of *lis pendens* applies only where the *lis* is pending before a Court. Further pending the suit, the

transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

In view of the law laid down by this Court in the aforesaid two judgments, we are unable to find any fault with the view taken by the High Court. This apart the High Court has already impleaded the respondent No.1 as a party respondent in the proceedings in the same suit arising from the determination of mesne profits. If respondent No.1 is to be impleaded as a party respondent in the execution petition relating to the mesne profits we find no reason not to implead it as a party petitioner in the execution of the decree for ejectment.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same. Parties shall bear their own costs.

CONTEMPT PETITION(C) NO.513/2004 IN CA NO.6458/2001

In view of the order passed today in the main appeal, Contempt Petition has become infructuous and is dismissed as such. Rule discharged.

.....J.

[ASHOK BHAN]

NEW DELHI;

September 13, 2005.

.....J.

[ARUN KUMAR]