

MANU/DE/1685/2021

Equivalent/Neutral Citation: 2021:DHC:2424

IN THE HIGH COURT OF DELHI

CS (OS) 81/2016

Decided On: 10.08.2021

Kulan Rukhsana Amin and Ors. **Vs.** Gaurang Kanth and Ors.

Hon'ble Judges/Coram:

Sanjeev Narula, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.S. Jauhar and Shrey Kapoor, Advocates

For Respondents/Defendant: Harish Malhotra, Senior Advocate, Dhruv Bhagat and Biji Rajesh, Advocates

JUDGMENT

Sanjeev Narula, J.

[VIA VIDEO CONFERENCING]

I.A. 9939/2021 (under Section 151 of CPC for delay in filing the reply to the application filed by the Plaintiff under Order 39 Rule 1 and 2 of CPC)

1. For the grounds and reasons stated therein, the delay in filing the reply is condoned.
2. The application is disposed of.

I.A. 7770/2021 (under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint)

3. Mr. S.S. Jauhar, counsel for the Applicant/Plaintiffs states that he has instructions not to press this application.
4. The application is dismissed as not pressed.

I.A. 7771/2021 (under Order 1 Rule 10 r/w Section 151 of CPC for adding the new purchasers of the suit property as party Defendants), & I.A. 7769/2021 (under Order 22 Rule 10 r/w Section 151 of CPC for substitution of Defendants No. 1 and 2 and impleadment of Applicants in place of the Defendants No. 1 and 2)

5. The present suit has been filed for declaration, possession, and permanent injunction against Defendants No. 1 and 2 in respect of property bearing No. 268, measuring 360 sq. yds. out of Khasra No. 138, situated in the revenue estate of Village Okhla, abadi known as Jamia Nagar, New Delhi [hereinafter known as 'Suit Property'].

6. Briefly put, the case of the Plaintiffs is that Sale Deed dated 4th November, 1999, purportedly executed by their late father in favour of Defendants No. 1 and 2, is null and invalid. Issues have been framed on 14th July, 2016, and the trial is currently underway.

7. Now, during the course of the trial, Defendants No. 1 and 2 have sold the Suit Property by way of a registered Sale Deed dated 26th March, 2021 in favour of the Applicants in I.A. No. 7769/2021, namely-Mr. Ayaz Mobin, Mr. Kashif Nazim and Sheikh Mohd. Akram [hereinafter jointly referred to as the Applicants' or 'Subsequent Purchasers']. In these circumstances, the present applications have been filed.

A. What are the reliefs prayed for?

8. In I.A. 7771/2021, the Plaintiffs seek impleadment of Subsequent Purchasers under Order 1 Rule 10 of CPC. On the other hand, in I.A.7769/2021, Subsequent Purchasers have invoked Order 22 Rule 10 of CPC to seek leave to contest the above suit and substitute themselves in place of Defendants No. 1 and 2.

9. Upon a perusal of the two applications, two distinct, though overlapping reliefs, are discerned: [i] Both the Plaintiffs as well as the Subsequent Purchasers, seek impleadment of Subsequent Purchasers as Defendants in the suit. To that extent, there is consensus between them; but [ii] the Subsequent Purchasers want to go a step further and seek to be substituted in place of the Defendants No. 1 and 2, implying thereby, that Defendants No. 1 and 2 be deleted from the array of parties and be supplanted instead by the Applicants in their shoes. Let us deal with each of these issues separately.

B. On impleadment of the Subsequent Purchasers

10. Mr. S.S. Jauhar, learned counsel for the Plaintiffs, has relied upon the judgment of the Supreme Court in Thomson Press (India) Ltd. v. Nanak Builders and Investors P. Ltd. and Ors.,¹ to argue that the Subsequent Purchasers can be impleaded as parties to the suit.

11. Mr. Harish Malhotra, learned Senior Counsel for the Applicants, on the other hand, submits that vide registered Sale Deed dated 26th March, 2021, Defendants No. 1 and 2 have sold, alienated, transferred and delivered the actual and physical possession of the Suit Property to Subsequent Purchasers, for valuable consideration. Thus, they are bona fide purchasers, and have become lawful owners in possession of Suit Property. The Subsequent Purchasers shall be directly and adversely affected by the final outcome of the suit. Therefore, they should be permitted to defend and contest the suit on its merits and in accordance with law, so as to safeguard their title and possession.

12. Mr. Malhotra has also expressed apprehension that, if the Applicants are not allowed to be impleaded, and are kept out of the suit, they suffer the risk of adverse orders. The Defendants No. 1 and 2, having been left with no surviving right, title or interest in the Suit Property, may not properly defend the suit, or may collude with the Plaintiffs, and the Applicants would be oblivious to such collusion.

13. The Court has heard arguments on these applications at substantial length and considered the contentions of the counsels. During pendency of the suit, without prior permission of the Court, title of the Suit Property purportedly stands transferred by Defendants No. 1 & 2 in favour of the Applicants. This amounts to a sale/transfer pendente lite. Such transferees, are representatives/assignees-in-interest of the parties from whom they have acquired that interest. The doctrine of lis pendens would be applicable to such a transfer, which, though ipso jure does not annul the transfer, but any such transfer of right, title or interest is subservient to the rights of parties in the pending litigation, as eventually determined by the Court. The same principle is also

enshrined in Section 52 of the Transfer of Property Act, 1882.² On this aspect, indeed, the law is well-settled and there is no gainsaying that rights and interest acquired by the Applicants under the Sale Deed dated 26th March, 2021 would be subservient to Defendants No. 1 and 2s' rights and they would be bound by the outcome of the present suit.

14. The Supreme Court in Thomson Press (supra), dealt with this concept, in relation to a suit for specific performance and allowed the addition of a third party (a subsequent purchaser) by relying upon the same principles.

15. The Court agrees with Mr. Malhotra that the Applicants (being the transferees pendente lite) are vitally interested in the result of the suit, especially when the Defendants No. 1 and 2 have transferred entire right, title and interest in the Suit Property in their favour. The decree, if passed against Defendants No. 1 and 2, would be binding on them too. Thus, undisputedly, the final judgment in the instant suit would affect the rights of the Applicants.

16. Further, Mr. Malhotra's apprehension of the Plaintiffs obtaining a collusive decree cannot be said to be unfounded and such a possibility cannot be eliminated outrightly. In fact, this reasoning was also acknowledged by the Court in Thomson Press (supra) to allow impleadment of a transferee pendente lite who had acquired interest from the Defendants therein.

17. On the question of impleadment, as noted above, there is in fact, no contest between the parties. However, it must be noted that in the instant case, the Plaintiffs seek impleadment of the Applicants as necessary parties, albeit under Order 1 Rule 10 CPC. That is not the correct provision invoked. On this issue, we must note that in Amit Kumar Shaw & Anr. v. Farida Khatoon & Anr. MANU/SC/0284/2005 : (2005) 11 SCC 403 the court has observed that though the Plaintiff is under no obligation to make a transferee lis pendens a party to the suit, however, under Order 22 Rule 10 CPC, an alienee pendente lite may be joined as party. Nevertheless, as both Plaintiff and the Applicants are in agreement on the point of impleadment of the Subsequent Purchasers, there is no further controversy in this regard. At this stage, no detailed enquiry is required to be contemplated for granting leave on the aspect of impleadment.

C. On substitution of Defendants No. 1-2 with Subsequent Purchasers

18. Mr. S.S. Jauhar, learned counsel for the Plaintiffs, submits that the Subsequent Purchasers cannot be substituted in place of Defendants No. 1 and 2, as pleaded in the Applicants' IA.

19. Mr. Harish Malhotra, learned Senior Counsel for the Applicants, submits that the right of substitution under Order 22 Rule 10 entitles the Applicants to supplant Defendants No. 1 and 2. In support of his submissions, he places reliance upon the following judgments:

(a) Amit Kumar Shaw (supra),

(b) Sri Jagannath Mahaprabhu v. Pravat Chandra Chatterjee & Ors.,
MANU/OR/0014/1992 : AIR 1992 Ori 47

(c) Dhurandhar Prasad Singh v. Jai Prakash University & Ors.,
MANU/SC/0381/2001 : (2001) 6 SCC 534

(d) Sirjan Pal Singh v. Harminder Singh Bakshi & Ors.,

(e) Shri Rikhu Dev Chela Bawa Harjung Das v. Som Dass, MANU/SC/0422/1975 : (1976) 1 SCC 103

(f) Pruthvirajsinh Nodhubha Jadeja (D) By LRs. v. Jayesh Chhakaddas Shah & Ors.³

20. In the opinion of the Court, such a prayer would not be permissible, as it would be contrary to the doctrine of dominus litis, which inter alia stipulates that it is for the Plaintiffs to identify the parties/persons against whom they have a grievance, and to implead them as Defendants in a litigation for necessary relief. The case of the Plaintiffs, as noted earlier, pertains to a challenge laid to the validity of a purported Sale Deed dated 4th November, 1999 executed by their late father in favour of the Defendants, on the premise that the said deed is a forged and fabricated document, unlawfully executed by Defendants to seize the suit property. To succeed in their claim, it is for the Plaintiffs to decide whose presence they deem necessary.

21. Mr. Malhotra has placed considerable reliance on the above-listed decisions to urge that Defendants No. 1 and 2 should be substituted and the Plaintiffs ought to proceed against only the Applicants. This court has thus gone through the said judgments. Alas, none of the other cases referred above advance the case of the Applicant with respect to substitution. In Pruthvirajsinh Nodhubha Jadeja (supra), Dhurandhar Prasad Singh (supra), Som Dass (supra) and Shri Rikhu Dev (supra), the party sought to be substituted derived rights from a since-expired party to the respective litigations, whether by way of succession or through sale/purchase. In such circumstances, the Courts have acknowledged the right of successors/assignees/transferees pendente lite, on account of devolution of interest upon them, and observed that they are, by necessity, entitled to be arrayed as parties as they would be vitally affected in case their interests were not represented. It has been noted that the plaintiff/party pressing for relief would have been rendered remediless had such transferees not been impleaded, and thus, substitution was the only alternative. Secondly, these cases are silent on the question of whether substitution can be allowed in case the seller/party to the suit is still alive, where the rights of the parties with respect to the suit property are not settled, which is the case in the present petition. Rather, in Sri Jagannath Mahaprabhu (supra), a full bench of the Orissa High Court, confirmed the order of a Division Bench arising out of Order 22 Rule 10, wherein the subsequent purchasers were allowed to be impleaded as Defendants No. 2-3, without substituting the seller/Defendant No. 1. Thus, the reliance placed upon these judgments is completely unfavourable to the case advanced by the Applicants, on the proposition of substitution.

22. Mr. Malhotra has laid grave emphasis on the judgment in Amit Kumar Shaw (supra) to argue that substitution should be allowed since the Applicants are the only persons who have a present and subsisting right, title and interest in the Suit Property. There can indeed be no doubt about the ratio laid down in Amit Kumar Shaw (supra), which has also been quoted and relied upon in Thompson Press (supra). However, the Applicants have misinterpreted the above judgment to stress that 'substitution' is the only option. The Appellant therein had sought substitution on the ground that the deceased Respondents, who were represented by their legal heirs, had sold the suit property to the Appellants, who were the only interested buyers of that property. The Appellants had sought substitution at the stage when the matter was in appeal. The court of original jurisdiction (High Court) had concluded that the presence of the Appellants was not necessary in order to decide the appeal, and thus the application for

addition of party under Order 1 Rule 10 CPC was not allowed. In these circumstances, discussing the law on the subject, the Apex Court, by doing a combined reading of Order 1 Rule 10 with Order 22 Rule 10 of CPC r/w Section 52 of the Transfer of Property Act, 1882, held that the court below had proceeded on a wrong premise that the Appellants had made the application for addition of party, whereas, the application under consideration was for substitution-as the owner/original respondents who had sold the suit property to the Appellants, had since deceased, and the appeal was continuing against the legal representatives thereof, who had no surviving interest. However, in the instant case, this observation cannot be construed, so as to advance the contention that substitution is imperative.

23. Therefore, the court does not find any merit in the plea for substitution.

D. Relief

24. Lastly, on the interplay of Order 1 Rule 10 and Order 22 Rule 10 CPC, in Thompson Press (supra), the Supreme Court held that the correct provision for such an application would be Order 22 Rule 10, yet, even in an application under Order 1 Rule 10 CPC, the enabling provision of Order 22 Rule 10 CPC could always be invoked if required on facts. Similar finding was also arrived at in Pruthvirajsinh Nodhubha Jadeja (supra) with respect to the same controversy. The Supreme Court held that not mentioning the correct provision is not fatal to the application, if the Court has the power to pass such an order.

25. Accordingly, I.A. 7769/2021 and I.A. 7771/2021 are allowed to the limited extent of granting leave the Subsequent Purchasers-Mr. Ayaz Mobin, Mr. Kashif Nazim and Sheikh Mohd. Akram-to be impleaded as Defendants No. 3 to 5 in the suit, under Order 22 Rule 10 of CPC.

26. Relief with respect to substitution is denied.

27. The amended memo of parties be filed by the Applicants within a period of one week from today.

28. The Court has been informed that the suit is at an advanced stage; the Plaintiffs have led necessary evidence, and witnesses on behalf of the Defendants are yet to be examined. Thus, Applicants who have been impleaded as parties, shall pursue only such defenses as were available and taken by Defendants No. 1 & 2, and none other.

29. The applications are disposed of in the above terms.

I.A. 7772/2021 (under Order 39 Rule 1 and 2 r/w Section 151 of CPC for stay of construction)

30. It is already 4:35 PM.

31. List for hearing on 25th August, 2021.

¹Civil Appeal No. 1518 of 2013, MANU/SC/0192/2013.

²See: Vinod Seth v. Devinder Bajaj, MANU/SC/0424/2010 : (2010) 8 SCC 1, also quoted in Thomson Press (supra).

³Civil Appeal No. 10521 of 2013.

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