

(2017) 02 MP CK 0232
In the Madhya Pradesh High Court
Case No : 1828 of 2016

Baliram

APPELLANT

Vs

The State of M.P.

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

[Constitution of India](#), [Article 227](#) -
Power of superintendence over all courts by the High Court
[Code of Civil Procedure, 1908](#), [Order 22 Rule 10](#) [Order 22 Rule 10](#), [Order 22 Rule 10](#)

Citation : (2017) 02 MP CK 0232

Hon'ble Judges : Prakash Shrivastava

Bench : Single Bench

Advocate : Mangesh Bhachawat, R.T.Thanewala, A.K. Sethi, S.J. Polekar

Judgement

1. This order will govern the disposal of MA.

Nos.1828/2016, 1829/2016, 1830/2016, 1831/2016,

1832/2016, 1833/2016, 1834/2016, 1835/2016, 1836/2016 and WP No.7074/2016 7076/2016, 7078/2016, 7079/2016, 7082/2016, 7083/2016, 7090/2016, 7092/2016 and 7099/2016.

2. The above Miscellaneous Appeals under Order 43 Rule 1(I) of the CPC are at the instance of assignee and the Writ Petitions under Art.227 of the Constitution are by the assigner (plaintiff) challenging the order of the trial court dated 20 th September, 2016 whereby their applications under Order 22 Rule 10, Order 1 Rule 10 read with Sec.151 and Order 6 Rule 17 of the CPC have been rejected. Since all the above cases involve same issue in almost similar fact situation and order under challenge are also similar, therefore, they are being decided by this common order.

3. In brief, assignor (plaintiff) Sanjeev Lunkad had filed the suits for specific performance of contract and at the final stage he had filed an application under

Order 22 Rule 10 of the CPC in those suits on the ground that in the rights under the agreement were assigned to Devikulam Developers (India) Pvt. Ltd., therefore, the said party be allowed to added as co- plaintiff No.2. The assignee M/s Devikulam Developers Pvt. Ltd. had also filed an applications for impleadment on the ground that the rights were assigned in the meanwhile by the plaintiff. On account of this development amendment in the plaint was sought by the appellants under Order 6 Rule 17 of the CPC. These applications have been rejected by the trial Court.

4. Shri R.T.Thanewala, learned counsel for the petitioners and Shri M. Bhachawat, learned counsel for the appellants have submitted that in the sale agreement executed between the parties there is no prohibition for assignment, on the contrary the agreement reveals that the assignment was permissible and Section 15(b) of the Specific Relief Act also permits the impleadment of assignee unless prohibited by agreement of the parties. He further submits that the assignee is claiming the same rights which the assigner has and no period of limitation has been prescribed for assignment, therefore, the order cannot be sustained.

5. Shri A.K. Sethi, learned counsel for the contesting respondents has opposed the prayer and supported the impugned orders. He submits that under Order 1 Rule 10 of the CPC addition of the parties is permitted, whereas under Order 22 Rule 10 of the CPC substitution can be allowed, hence under Order 22 Rule 10 of the CPC addition of the parties cannot be claimed.

6. I have heard the learned counsel for parties and perused the record.

7. Trial court by the impugned order has rejected the applications under Order 1 Rule 10 CPC as also Order 22 Rule 10 CPC taking the view that no right was created on the basis of agreement of sale in view of Section 54 of Transfer of Property Act, therefore, no question or assignment of any right arises in the matter. It has further been found that applications were filed belatedly ie. five years after filing of the suit and no reason were assigned for executing assignment deed at this stage and that the applications filed by petitioner/appellants were not bona-fide.

8. The record reflects that the respondent No.1 plaintiff Sanjeev Lunkad has filed the suit for specific performance of the contract to enforce the sale agreements. It has been pointed out that in the suits meanwhile evidence of the parties is over and final arguments have been heard and the cases have been reserved for judgment. At the advance stage in the suits, applications u/O.22 Rule 10 and u/O.1 Rule 10 etc. of the CPC were filed by the petitioners/appellants for adding the appellants as co-plaintiff on the ground that the plaintiff had executed the deed of assignments in favour of the appellants.

9. The appellant assignee may be required to be impleaded only if he is a necessary or proper party in the suit. A necessary party is one in whose absence an effective decree cannot be passed by the court and a proper party is one

whose presence enables the court to completely, effectively and properly adjudicate upon all the matters and issues involved in the case, though, he may not be a person in whose favour or against whom a decree is to be made.

10. The supreme court in the matter of *Kasturi Vs. Iyyamperumal and others* reported in (2005) 6 SCC 733 while considering the issue relating to addition of parties in a suit for specific performance of the contract has held that such an issue is to be decided keeping in view the scope of the suit and in such a suit the guiding principle is that the presence of such a party should be necessary to adjudicate the controversy involved in the suit. While holding so it has been laid down that:-

(i) there must be a right to some relief against such party in respect of the controversy involved in the proceedings; (ii) no effective decree can be passed in the absence of such party.

It has further been held as under:

11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all."

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person."

11. In the matter of *Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru* reported in (1995) 3 SCC 147, Supreme Court, in a case where the party concerned was not party to the contract but sought to be impleaded as party defendant on the ground that he had acquired subsequent interest as co-owner by virtue of decree obtained from the court, has held that he is not entitled to be joined as defendant and is not a necessary or proper party under Order 1 Rule 10 CPC and had acquired the status of co-owner not obtaining by assignment or devolution of interest, hence Order 22 Rule 10 CPC is also not attracted. In that

case, it has been held as under:

"9. Sub-rule(2) of Rule 10 of order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."

12. In the matter of Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others reported in (2012) 8 SCC 384 the Supreme court has laid down the following principles governing the disposal of application for impleadment:

"41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1 The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

13. By examining the present case, in the light of the aforesaid judgment it is noticed that presence of Devikulam Developers Pvt. Ltd., the assignee, is not

necessary for full and effective disposal of the suits because the interest of assignee is adequately represented through the original plaintiff since the original plaintiff himself is the shareholder and promoter director of the assignee company. It is also noticed that in the suit there is already a prayer to get the sale deed executed in favour of plaintiff or its nominee. Moreover, the assignment has been made by the original plaintiff at the final stage of the suit and the assignment has been found to be lacking in bona-fides. In some of the agreement under consideration the assignment clause exists but that alone cannot be the sole consideration to direct the impleadment of assignee ignoring all other relevant consideration. Order 22 Rule 10 of CPC is an enabling provision and assignee is not required to be impleaded mechanically in every case of assignment, but court is required to consider all the relevant circumstances while considering such a prayer in a suit for specific performance. Keeping in view the above relevant consideration, no fault can be found in the final conclusion reached by the trial court in the impugned order.

14. Shri Mangesh Bhachawat learned counsel for appellant has relied upon the judgments of this court in the matter of Shri Penta Buildcon Pvt. Ltd. Vs. Laltobai and others reported in 2016(2) JLJ 179; Urmila Patel (smt.) and another Vs. Smt. Laxmibai and others reported in 2001 (1) JLJ 202; Sitaram Dua Vs. Saraswati Devi Sainy and others reported in 2001(1) JLJ 184; Gouri Shankar Vs. Naveen Chand (dead) through LRs. Smt. Snehlata Jain and another reported in 2004(3) MPLJ 246 but these are the cases where the suit property was sold by owner pending the suit and since the interest in the property was transferred hence impleadment of purchaser was held to be necessary, but the present case stands on different footing.

15. There is a distinction between assignment of right to purchase a property by a purchaser in an agreement to sale and sale of property by the owner to third party after executing the sale agreement. In later cases the purchaser may be required to be impleaded as party in a suit for specific performance of the contract to fully adjudicate upon all the issues involved in the matter. Hence, in such cases as held by the supreme court in the matter of Durga Prasad and another Vs. Deep Chand and others reported in AIR 1954 SC 75 and Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and others reported in (2013) 5 SCC 397 the impleadment of the purchaser may be permitted. That may not be so in the former case where the assignee is not a party to the contract of sale sought to be enforced in a suit for specific performance. The above view is supported by judgment of the supreme court in the matter of Raheja Universal Limited Vs. NRC Limited & Ors. reported in AIR 2012 SC 1440 para 44 wherein while considering Sec.54 of the Transfer of Property Act it has been held that the sale agreement itself does not create any interest or charge in the property.

16. Keeping in view of the above factual and legal position, I am of the opinion that trial court has not committed any error in rejecting the applications u/O22

Rule 10 and u/O.1 Rule 10 CPC.

17. So far as application under Order 6 Rule 17 of the CPC is concerned, it was filed belated at the final stage of the suit without satisfying the test of due diligence, hence it has rightly been rejected keeping in view the proviso to Order 6 Rule 17 of the CPC.

18. Hence, I am of the opinion that no interference in the impugned order under challenge in the Misc.Appeals and Writ Petitions is required. Hence, the Misc Appeals and Writ petitions are dismissed.

19. The original order be kept in M.A. No.1828/2016 and a copy whereof be placed in the record of connected Miscellaneous Appeals and Writ petitions.