

(2008) 02 KAR CK 0055
In the Karnataka High Court
Case No : M.F.A. No. 7397 of 2004

Harikishan Malu, Premchand Malu and Brijmohan Malu	APPELLANT
Vs	
Ramesh Kulkarni, Krishnakumar and Laxmi Raman Lahoti	RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10

Citation : (2008) 02 KAR CK 0055

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : K. Dhiraj Kumar, for the Appellant; Namitha Mahesh, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—This appeal is directed against the dismissal of the application filed by the appellants under Order 22 Rule 10 CPC seeking permission of the court to permit them to come on record as additional defendants in O.S. No. 88/98 pending on the file of the II Addl. Civil Judge(Sr. Dn.), Gulbarga.

2. The case of the appellants are that the plaintiff-respondent No. 1 filed O.S. No. 88/88 against the respondents No. 2 and 3 herein for specific performance of contract and perpetual injunction contending that there was an oral agreement of sale of the portion of the property bearing No. 1-1295 at Gullabawadi, Aiwan-E-Shahi Road, Gulbarga for an amount of Rs. 2,20,000/- and that he had paid a sum of Rs. 2,19,000/- and how he has to pay only Rs. 1000/- as consideration. Since the respondents No. 2 and 3 refused to execute the sale deed he filed the said suit and also obtained an order of temporary injunction restraining respondents No. 2 and 3 from alienating the suit property in favour of third parties. That before the service of summons and the order of temporary injunction, the appellant No. 1 has taken lease for 100 years over plot measuring 52 ft. 3 inches towards east and 52 ft. 3 inches towards west, 87 ft. towards north and 77 ft. towards south by a registered lease deed dated 30.5.1998 which

is part and parcel of house bearing No. 1-1295 of Lahoti Estate. That appellant No. 2 purchased, a plot measuring 81.25 ft.X 52.25 ft. under a registered sale deed dated 30.5.1998 which is also part of the suit property. That appellant No. 3 purchased a portion of house No. 12 95/B and open space of 82 ft.X 58ft. under the registered sale deed from respondents No. 2 and 3. They came to know about the pendency of the present suit, immediately they filed an application under Order 22 Rule 10 CPC seeking permission of the trial court to permit them to come on record as defendants No. 3 to 6, which came to be dismissed. Hence, this appeal.

3. Heard the arguments of both the parties and perused the records. The question that arises for consideration is " Whether the application to come on record by subsequent transferee be rejected and whether the subsequent purchaser be non-suited altogether.

4. The contention of the respondent No. 1-plaintiff is that the transaction between the appellants and respondents No. 2 and 3 have taken place during the pendency of the suit and despite injunction order granted by the trial court and hence, the appellants are not necessary or proper party to the suit; that the instant suit being for specific performance of contract the presence of appellants is not necessary.

5. The trial court dismissed the application of the appellants holding that the transaction between the appellant and respondents No. 2 and 3 is hit by the doctrine of lis pendens and therefore, whatever the decree that would be passed will be binding on the appellants and that the alienee cannot be considered as necessary or proper parties to the suit.

6. Admittedly during the pendency of the suit O.S. No. 88/1988 the appellants have taken a portion of the suit property on lease for 100 years and also purchased the major portion of the property under registered sale deed dated 30.5.1998. The documents produced by the appellants in support of that application clearly disclose that the suit property is also part of the property purchased by them under the said lease deed and sale deed dated 30.5.1998.

7. The dispute in between the parties was in respect of the validity of grant of the lease and also validity of execution of sale deed in favour of the appellant by the respondent No. 2 and 3 and also with regard to the claim of the plaintiff-respondent No. 1 regarding the existence of a valid oral agreement of sale and acting on the same by the plaintiff and respondents No. 2 and 3. However, it is settled law that any purchase during the pendency of the suit has to be made only with the permission of the court, in the instant case no such permission of the court has been obtained. However, in MFA No. 1882/98 wherein the plaintiff-respondent No. 1 challenged the order of the trial court rejecting his application filed Under Order 39 Rule 1 and 2, this Court has ordered that the transaction between the appellants and respondents No. 2 and 3 has taken place, without knowledge of the pendency of O.S. No. 88/98 filed by the plaintiff/respondent

No. 1.

8. Moreover there is no allegations against the appellants that they acted with malafide or ill motive in entering transaction with respondents No. 2 and 3. Therefore, it is to be had that the appellants acted bonafidely in entering into transaction with the respondents No. 2 and 3. The appellants immediately after coming to know about the filing of the suit by the respondent No. 1 have filed I.A. No. VI Under Order 22 Rule 10 CPC seeking permission of the court to come on record as additional defendants as such there is no inordinate delay caused in filing the application by the appellants. Therefore, it is argued by the counsel for the appellant that since the appellants have become absolute owner of the portion of the property and acquired lease hold rights in respect of the same, their interest will be highly prejudiced and they will be vitally affected if any order is passed by the trial court without hearing the appellants, therefore, it is prayed that they way be permitted to come on record as additional defendants.

9. Under Order 22 Rule 10 CPC it is the discretion of the court to grant leave to the applicant to come on record and no detailed inquiry is necessary at the time of granting leave but the court must prima facie satisfied itself that their presence is just and necessary for final adjudication of the matter and to avoid multiplicity of proceedings between the parties. The question of validity of assignment or devolution of any right can be considered at the final hearing of the proceedings. An alienee pendente lite is bound by the final decree that may be passed in the suit. Therefore, his application to be brought on record should ordinarily be allowed.

10. However, it is settled that during the pendency of the suit, the transferee of any interest is not entitled as of right to be made a party to the suit, it is the discretion of the court to make him a party. 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, where the transfer is of the entire interest of the defendant, the defendant 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 22 Rule 10 CPC., an alienee pendente lite may be joined as party to enable him to protect his interest. The transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom ha has acquired that interest. Therefore, he is entitled to be impleaded in the suit or other proceedings where the transferor pendente lite is made a party and to be heard in the matter on the merits of the case.

11. The instant application is filed by the appellants under Order 22 Rule 10 CPC to come on record to substitute the respondents No. 2 and 3 to the extent they acquired interest in the property and the application is net filed Under Order 1 Rule 10 CPC to come on record as additional defendants on their own right.

Therefore, the trial court erred in rejecting the appellants application for substitution treating the same as additional parties and thereby rendering the appellants non-suited. The presence of the appellants is absolutely necessary since the appellants have got substantial right title and interest on the suit property, consequently, have acquired substantial right and interest in the suit. Moreover: to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit, the presence of appellants is very much required. Hence the order of the trial court is liable to be set aside.

12. Hence, this appeal is allowed.

13. The order dated 14.9.2004 passed by the II Addl. Civil Judge (Sr. Dn.) Gulburga in O.S. No. 88/98 is hereby sat aside. I.A. No. VI filed by the appellants before the trial court is allowed. They are permitted to come on record as defendants.

14. The observations made by this Court in this appeal shall not affect the rights of the parties.