
(2010) 05 RAJ CK 0024
In the Rajasthan High Court

Harsh Vardhan Singh

APPELLANT

Vs

Ranveer Singh and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (2010) 05 RAJ CK 0024

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The applicant, M/s. Suncity Projects Private Limited, has filed this application under Order 1 Rule 10 C.P.C., for being impleaded as party respondent in the present appeal.

2. It is the case of the applicant that the plaintiff had filed a civil suit for partition of the property against the defendants. However, vide judgment dated 20-5-2003, the suit of the plaintiff was dismissed by the learned trial court. Aggrieved by the said judgment, this first appeal was filed by the appellant plaintiff in the year 2003 itself. From 2003 till 2008, this Court did not grant any stay in favour of the appellant. During this period, the defendant No. 1, Ranveer Singh, sold part of the property to Ms/. Harihar Buildtech Private Limited. The applicant, M/s. Suncity Projects Private Limited, is a sister concern of M/s. Harihar Buildtech Private Limited. Since part of the property was bought by M/s. Harihar Buildtech Private Limited, it transferred the land to the applicant for developing a township. It was at the instance of the applicant that the nature of the land was changed from agricultural to residential and the proceeding u/s 90B of Rajasthan Land Revenue Act was carried out by the Jaipur Development Authority (‘JDA’ for short). Subsequently, the applicant has sold the plots and houses to different persons. However, when the applicant and the plot holders requested the JDA to issue pattas in their favour, they were informed that because of stay granted by this Court on 10-4-2008 and 8-5-2008, which was confirmed on 29-5-2008, the JDA could not issue patta in their favour. Thus,

according to applicant, recently they have come to know that litigation was pending between the appellant and defendant and this Court has granted stay in favour of the appellant in the year 2008. When M/s. Harihar Buildtech Private Limited had purchased the property from defendant No. 1, they were unaware of the fact that the litigation was pending between the appellant and defendant No. 1. As such M/s. Harihar Buildtech Private Limited was a bonafide purchaser. Since M/s. Harihar Buildtech (P) Ltd. has transferred the land to Suncity Project Pvt. Ltd, the applicant has stepped into the shoes of M/s. Harihar Buildtech (P) Ltd. Hence this application for impleadment as party respondent has been filed by the applicant.

3. Mr. Vinay Mathur, the learned Counsel for the applicant, has contended that since the applicant has bought part of the property in dispute, since the judgment passed by this Court would adversely affect the interest of the applicant, therefore, the applicant should be impleaded as party respondent. He has further contended that even during the proceeding u/s 90B of the Rajasthan Land Revenue Act, a proceeding initiated at the instance of the applicant, there was no information that the property in dispute was subject matter of any litigation. Moreover, when the property was bought by M/s. Harihar Buildtech Private Limited, and when it was transferred to the applicant, during that period there was no stay in favour of the appellant. Subsequently, the stay was granted on 10-4-2008 and 8-5- 2008, which was confirmed on 29-5-2008. Thus, during the intervening period from 2003 till 10-4-2008, there was no stay in favour of the appellant. Hence, the property was bought in a bona fide manner. Once the applicant has learnt that there is stay order in favour of the appellant, once the applicant has realised that its interest would adversely be affected by any order passed by this Court, the applicant deserved to be impleaded as party respondent.

4. On the other hand, Mr. D.D. Patodia, the learned Counsel for the appellant, has contended that according to Section 52 of the Transfer of Property Act, the defendant could not transfer the property to the applicant, therefore, the applicant is not a necessary party. Hence, he cannot be impleaded as party. Moreover, at best the applicant is an assignee. Therefore, instead of filing the application under Order 1 Rule 10 C.P.C., it should have filed the application under Order 22 Rule 10 C.P.C. Thus, the application under Order 1 Rule 10 C.P.C., deserves to be dismissed. Lastly, even if the applicant is apprehending that it can be affected by the judgment passed by this Court, at best he can be substituted in place of respondent No. 1.

5. Mr. R.K. Agrawal, the learned Counsel for the respondent No. 1, has submitted that the applicant has wrongly filed the application under Order 1, Rule 10 C.P.C. Since the moot issue is whether the appellant is entitled to have the property partitioned in his favour or not, the applicant is unconcerned with the suit property. Therefore, the applicant cannot possibly be impleaded as party. The applicant is not a necessary party. He has further argued that since respondent

No. 1 has sold a part of the property to the applicant, the right of applicant would be defended by respondent No. 1.

6. In rejoinder, Mr. Vinay Mathur, the learned Counsel for the applicant has contended that merely mentioning of wrong provision in the application does not preclude the applicant from raising his grievance. Since, any order passed by this Court would adversely affect the interest of the applicant, the applicant has a valid locus standi to be heard by this Court. In order to buttress his contention he has relied upon J. Kumaradasan Nair and Another Vs. IRIC Sohan and Others, and Amit Kumar Shaw and Another Vs. Farida Khatoon and Another,

7. Heard learned Counsel for the parties, and perused the material available on record.

8. The moot question before this Court is whether at the stage of first appeal, the applicant should be impleaded as party or not?

9. It is, indeed, a settled principle of law that merely by mentioning a wrong provision of law a party cannot be non-suited. Similar view has already been expressed by the Hon"ble Supreme Court in the case of J. Kumardasan Nair (supra).

10. It is, indeed, trite to state that in case an order or judgment passed by a court would adversely affect the interest or right of a party, the party is to be given opportunity of hearing. Court of law cannot ignore the existence of principle of natural justice. Moreover, the court cannot be oblivious to the philosophy that "justice should not only be done, but should manifestly appear to be done". Although, Section 52 of the Transfer of Property Act, prevents a party from transferring his interest to another party during pendency of a lis, but only on the ground that property was transferred during pendency of a case, in violation of Section 52 of the Transfer of Property Act, would not mean that the transferee should be non- suited. It is, in fact, to meet such contingency that Order 1 Rule 10, and Order 22 Rule 10 C.P.C., were created. Considering the fact that applicant's interest and rights would be affected, adversely or otherwise, the applicant has a right to be heard by this Court.

11. The issue faced by this Court was equally tackled by the Hon"ble Supreme Court in the case of Amit Kumar Shaw (supra). In the said case during pendency of first appeal, the entire property owned by Birendra Nath Dey and Smt. Kalyani Dey were sold to Amit Kumar Shaw and Anand Kumar Shaw. Thereafter, during the pendency of the appeal, Amit Kumar Shaw and Anand Kumar Shaw moved an application for impleadment. However, the said application was rejected by the High Court. The Hon"ble Supreme Court dealt with following issues:

1) Whether on a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure, 1908 and Section 52 of the Transfer of Property Act, 1882, and application for substitution by a subsequent transferee can be rejected and he be non-suited altogether?

2) Whether a decree for adverse possession is set aside in First Appeal in the year 1992 and no stay application was filed for long 12 years (till 2004) in the Second Appeal, whether a transferee interregnum from the owner/ defendant, without knowledge of the second appeal, is a necessary party or whether their application for substitution can be rejected, when there is no allegation of mala fide or ill motive?

3) Whether the High Court has not committed serious error while concluding that the presence of the appellants is not necessary in order to decide the appeal and there is no merit in the application for addition of party though the application was made by the appellants for substitution of their names in place and stead of contesting defendant No. 10, who sold the suit property to the appellants?

4) Whether the High Court has not committed error by rejecting the appellants' application for substitution treating the same as addition of party and thereby rendering the appellants non-suited and remediless?

Taking into consideration the provisions of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure, 1908 and Section 52 of the Transfer of Property Act, 1882, the Hon'ble Supreme Court opined as under:

The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

(1) when he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) when, without his presence, the questions in the suit cannot be completely decided.

The power of a court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.

The application under Order 22 Rule 10 can be made to the appellate court even though the devolution of interest occurred when the case was pending in the trial court. In the instant case, the suit was decreed in favour of Fakir Mohammad by judgment and decree dated 3-11-1989.

Under Order 22 Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The court has only to be prima facie

satisfied for exercising its discretion in granting leave for continuing the suit.

An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

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, where 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 22 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 interest. 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 his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

12. Considering the principles laid down by the Apex Court, quoted above, this Court has no hesitation in impleading the applicant as party respondent.

13. Therefore, the application is, hereby, allowed. The applicant is impleaded as party respondent No. 19. Since the amended cause-title has already been filed, the same be taken on record.