

(2013) 07 DEL CK 0234
In the Delhi High Court
Case No : Cs (OS) No. 2014 of 2011

Kamlesh Sharma @ Kamlesh Kumari and Another	APPELLANT
Vs	
Satya Devi and Others	RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Transfer of Property Act, 1882 — Section 52

Citation : (2013) 7 AD 145 : (2013) 137 DRJ 340

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjeev Bahl and Mr. Rajat Bhardwaj and Mr. Eklavya Bahl, for the Appellant; Sanjiv Sindhwani and Mr. J.K. Chawla, Advocates for Proposed Defendant No. 5, Mr. L.M. Asthana and Mr. Siddhant Asthana and Mr. P.R. Singh, Advocates for D-1, 3 and 4, for the Respondent

Judgement

S. Muralidhar, J.

IA Nos. 3497 of 2013 (filed by Plaintiffs under Order 1 Rule 10 CPC), 3498 of 2013 (filed by Plaintiffs under Order XXXIX Rules 1 & 2 CPC), 3499 of 2013 (filed by the Plaintiffs under Order XXXIX Rule 2A CPC)

1. The background to these applications is that Smt. Kamlesh Sharma @ Kamlesh Kumari, Plaintiff No. 1 and Smt. Renu Rai @ Renu Kumari, Plaintiff No. 2, who are sisters and daughters of late Mr. Suraj Prakash Sharma, filed the aforementioned suit [CS (OS) No. 2014 of 2011] against Smt. Satya Devi, Defendant No. 1, (the mother of Plaintiffs), Shri Satyender Kumar, Defendant No. 2, (brother of the Plaintiffs), Smt. Sudesh Kumari and Ms. Anita Kumari, Defendant Nos. 3 and 4, (sisters of the Plaintiffs) seeking partition of the property at D-147, Block No. D, Surajmal Vihar (also known as Teachers Colony), Delhi - 110 092 (hereinafter referred to as "the suit property") measuring about 217.87 sq. yards, belonging to their father late Mr. Suraj Prakash Sharma, and

for declaration of the 1/6th share of each therein of the Plaintiffs. The other incidental reliefs prayed for one injunction restraining the Defendants from alienating, transferring, or creating any third party interest or dealing with the suit property in any manner. IA No. 13113 of 2011 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ("CPC") seeks an ad interim ex parte injunction in the above terms. While directing summons to issue in the suit and notice in the application on 19th August 2011, this Court granted an ad interim injunction directing the parties to maintain status quo with respect to possession and title of the suit property.

2. Defendant Nos. 1, 3 and 4 filed IA No. 18330 of 2011 under Order VII Rule 11 CPC for rejection of the plaint. It was claimed by the Defendants 1, 3 and 4 in their written statement that during his life time, late Mr. Suraj Prakash Sharma had executed a Will dated 10th August 1989 which was registered before the Sub Registrar, Delhi by which he had given the property to his wife Smt. Satya Devi (Defendant No. 1) as sole and exclusive owner along with all movable properties, i.e., deposits in banks and GPF etc. It was stated that in terms of the will, the unmarried daughters would continue to live in the property till they moved out to their respective matrimonial home. It was further stated that Defendant No. 4, who is unmarried, and Defendant No. 3, who had some matrimonial dispute, were residing in the said premises. Since Defendant No. 2 did not have good relations with his father, he had not been given any share. After the death of the father, the suit property was transferred in the name of Defendant No. 1 after a relinquishment deed dated 23rd February 1990 was executed by all the children with the consent and knowledge of Plaintiff No. 1. Thereafter, on 18th June 2009, Defendant No. 1 got the property converted into freehold.

3. The Plaintiff thereafter filed IA No. 19874 of 2011 under Order VI Rule 17 CPC to amend the plaint by adding the prayer for a declaration to the effect that the Will dated 10th August 1989 and the relinquishment deed dated 23rd February 1990 were illegal, null and void. By an order dated 5th March 2012, the said application was allowed with costs of Rs. 10,000 and the amended plaint was taken on record.

4. A detailed order was passed by the Court on 4th May 2012 in IA No. 13113 of 2011 under Order XXXIX Rules 1 and 2 CPC. The Court noted that there was a relinquishment of rights by Plaintiff No. 2 in favour of her mother and this fact was not disclosed in the plaint. The fact that her father owned the suit property and had bequeathed it in favour of his wife was not denied by the Plaintiffs. The suit was filed 21 years after the death of the father. Given these factors, it was held that the Plaintiffs had failed to establish any prima facie case in their favour. If the Plaintiffs at the time of trial were able to establish that the documents under challenge were manipulated, then doctrine of lis pendens would apply. The Court noted that in case the interim order were to continue, the Defendant No. 1 would unnecessarily be deprived of her valuable rights under the Will and the Relinquishment Deed. Accordingly, the interim order dated 19th August 2011 was

vacated. Aggrieved by the aforementioned order, the Plaintiffs filed FAO (OS) No. 203 of 2012. The Division Bench, by its order dated 15th May 2012, concurred with the view taken by the learned Single Judge. However, in para 15 of the order, the Division Bench held as under:

15. Under the circumstances, we concur with the view taken by the learned Single Judge and thus we dismiss the appeal in limine but would simultaneously highlight that if Satya Devi intends to sell the property, before selling the same, she would file an application along with an affidavit disclosing the name of the buyer, the address of the buyer and the price at which she has agreed to sell the subject property. The affidavit would inform the Court that the buyer has been informed about the pendency of the suit and the interim order passed by the learned Single Judge as affirmed by us.

5. The Defendant No. 1 filed IA No. 22320 of 2012 u/s 151 CPC vide diary No. 196010 dated 10th December 2012 enclosing an affidavit indicating the name of the buyer as Smt. Sapna Jain. In para 5 of the application, it was stated that "the Applicant intends to sell the property and filing the present application along with the affidavit as directed by the Hon"ble Court." In para 7 of the application it was stated as under:

7. That a copy of the affidavit in compliance of order dated 15th May 2012 in FAO (OS) No. 203 of 2012 is enclosed as Annexure B discloses the name of the buyer, the address of the buyer and the price at which the Defendant No. 1s agreed to sell the subject property with intimation that the buyer has been informed about the pendency of this suit and the interim order passed by the learned Single Judge.

6. Significantly, the said application which was filed on 10th December 2012 enclosed the affidavit of the Defendant No. 1 dated 7th December 2012. Para 3 of the affidavit stated that "the deponent/Defendant No. 1 being the absolute owner of property No. D-147, Suraj Mal Vihar, Delhi - 110 092 intends/agreed to sell the same and as per the direction of the Hon"ble High Court disclosing the name of the buyer, the address of the buyer and the price at which the deponent has agreed to sell the subject property. The details of the same are as under:

7. Para 4 of the affidavit states that "the department/defendant No. 1 has informed the buyer about the pending of the suit and the interim order passed by the learned Single Judge in CS(OS) No. 2014/2011 as directed by this Court.

8. Para 5 of the affidavit stated that "the contents of the accompanying application are read over to me in vernacular along with the contents of the present affidavit which are true and correct and the contents of the accompanying application are not repeated here for the sake of brevity and be read as part and parcel of the present affidavit". The verification below the affidavit stated that the "contents of the present affidavit are true and correct and nothing material has been concealed therefrom". In the said application, notice was accepted by the Plaintiffs" counsel on 14th December 2012.

9. The Plaintiffs then filed IA No. 22699 of 2012 u/s 151 CPC stating that "since the Defendant No. 1 has agreed to sell the aforesaid property for a consideration of Rs. 2,21,00,000" the Plaintiffs "are ready and willing to buy property at a sum of Rs. 3,25,00,000". The Plaintiffs prayed for a direction to Defendant No. 1 to sell the suit property to them for the said sum. It was prayed that in the meantime status quo be maintained. On 18th December 2012 the Court directed replies to be filed to the said application.

10. In a reply filed by Defendant No. 1 to IA No. 22699 of 2012, filed on 9th January 2013, it was stated that "the Defendant Smt. Satya Devi sold the property to the buyer as already mentioned in the affidavit" and therefore, the said application was not maintainable. On 10th January 2013, when this fact was brought to the notice of the Court, the Court inter alia observed as under:

In the meanwhile, since the suit property has been sold by the Defendant No. 1 in terms of the liberty granted to her by the Division Bench in FAO (OS) No. 203 of 2012, she shall place on record a copy of the sale deed before the next date of hearing and then it would be examined as to whether that transaction was in terms of the liberty given by the Division Bench since counsel for the Plaintiffs are claiming to day that it is not so.

11. The Plaintiffs then filed IA No. 3497 of 2013 under Order 1 Rule 10 CPC seeking the impleadment of Smt. Sapna Jain as party Defendant in the suit. It was argued that Defendant No. 1 had wilfully flouted the order dated 15th May 2012 of the Division Bench. Even in her reply dated 7th January 2013, Defendant No. 1 had failed to disclose that she had already executed a sale deed on 10th December 2012 in favour of Smt. Sapna Jain and received the part payment of Rs. 50 lakhs on 22nd July 2012 without complying and in utter wilful violation of the order dated 15th May 2012 passed by the Division Bench of this Court. It was pointed out that pursuant to the order dated 10th January 2013, a copy of the said sale deed was placed on record by Defendant No. 1 on 7th February 2013. A copy thereof was given to the Plaintiffs on 6th February 2013.

12. In para 12 of IA No. 3497 of 2013, the Plaintiffs pointed out that there was a misstatement of facts in the sale deed dated 10th December 2012. Clauses 6 and 12 of the sale deed read as under:

6. That the Vendor hereby assures the vendee that the said property under sale is free from all sorts of encumbrances, i.e., burden, sale, decree, mortgage, will, gift, loans, liens, charges, surety, security, revision, writ, appeal, court injunction stay order, equitable mortgage, any litigation of any kind or any other kind of transfer, and there is no defect in the title or the said property, if proved otherwise then the vendor shall be bound to indemnify the same to the vendee and the vendor shall be bound to fulfil all such losses thus sustained by the vendee.

...

12. That the aforesaid property is not the property of HUF and that the children/ family member of the vendor and nobody else has any right, title, interest, share, claim or demand whatsoever, or however, in the aforesaid property.

13. It was thus contended that Defendant No. 1 as well as buyer, Smt. Sapna Jain, had joined hands with each other to defeat the rights of the Plaintiffs in the pending suit. In the circumstances, the presence of the buyer, Smt. Sapna Jain, was necessary so as to pass an effective decree in relation to the suit property. Accordingly, it was prayed that Smt. Sapna Jain be impleaded as Defendant No. 5.

14. The Plaintiffs filed IA No. 3498 of 2013 under Order XXXIX Rules 1 and 2 CPC praying for an ad interim injunction in favour of the Plaintiffs and against the proposed Defendant, Smt. Sapna Jain, her agents, servants, employees, legal heirs, nominees, assigns etc. restraining them from selling, transferring, alienating and/or transferring or creating any third party interest in relation to the suit property till the final disposal of the suit.

15. IA No. 3499 of 2013 was filed by the Plaintiffs against Defendant No. 1 and Smt. Sapna Jain under Order XXXIX Rule 2A CPC praying that notice of contempt be issued against Defendants for wilful disobedience of the order dated 15th May 2012 passed by the Division Bench and direct Smt. Sapna Jain to transfer the suit property in the name of Defendant No. 1 forthwith.

16. While accepting notice on the aforesaid applications on 18th April 2013 a statement was made on behalf of Smt. Sapna Jain, that till the next date of hearing she "shall not enter into any transaction in respect of the suit property with anyone." The said interim order has continued thereafter.

17. In her reply to the applications, Smt. Sapna Jain has claimed that she is a bona fide purchaser of the suit property and, therefore, enjoys absolute and perfect title thereto. She states that during the discussions preceding the sale, she dealt with a broker Mr. Sanjay Jain and a mediator Dr. Chhavi Prakash. She further states that "these persons did not deem it fit to inform Smt. Sapna Jain about the pendency of the suit,....." It is stated that "Smt. Sapna Jain has purchased the property bonafidely and in good faith without any knowledge of any kind of litigation between the Plaintiff and their mother Smt. Satya Devi." It is averred that the application has been filed malafidely by the Plaintiffs to pressurise her to succumb to the illegal demands of the plaintiffs and that the buyer is neither a necessary nor a proper party to the suit for partition. It is stated that no legal proceedings can be pursued on the basis of a non-existent or uncertain cause of action and since no relief can be claimed against the buyer by the Plaintiffs, such buyer is not a necessary party to the suit.

18. Mr. Sanjiv Bahl, learned counsel for the Plaintiffs, has relied upon the decisions of the Supreme Court in Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , Dhanlakshmi v. P. Mohan 2007 (2) 232, T.G. Ashok Kumar Vs. Govindammal and Another, and the decision of this Court in

A.K. Chatterjee Vs. Ashok Kumar Chatterjee, to urge that where a sale deed has been executed by a party to a partition suit during the pendency of such suit then the buyer of such property has to be made a party. He further submitted that the sale deed with respect to the suit property was executed in favour of Smt. Sapna Jain by Defendant No. 1 in the teeth of the express directions issued by the Division Bench in a judgment dated 15th May 2012. Since no intimation was given by Defendant No. 1 to the Court prior to the sale of the suit property, the sale deed was null and void. He submitted that the buyer was a necessary and proper party in the suit. If, as prayed for, the sale in her favour was declared as null and void, a direction would have to be issued to her to retransfer the property back in favour of Defendant No. 1. Such an order cannot be passed without having the buyer. Further, if the buyer (Smt. Sapna Jain) was not restrained from further alienating, transferring or creating any third party right in relation to the suit property during the pendency of the present suit, there was every possibility of an innocent third party buying it from her without knowledge of the present proceedings.

19. In reply, Mr. Sanjeev Sindhvani, learned Senior counsel appearing for the proposed Defendant Smt. Sapna Jain placed considerable reliance upon the decision of the Division Bench of this Court in V.N. Verma Vs. Smt. Veena Mahajan, which after considering the earlier decisions of the Supreme Court came to the conclusion that the subsequent buyer was not a necessary and proper party in a suit for specific performance. Mr. Sindhvani also placed reliance on the decision of the Supreme Court in Sarvinder Singh Vs. Dalip Singh and Others, where in similar circumstances the prayer for addition of a subsequent purchaser/buyer and parties to a civil suit for declaration on the basis of a Will was rejected. He submitted that this being a partition suit no relief could be sought for against Smt. Sapna Jain who was a stranger to the suit.

20. Having heard learned counsel for the parties and having perused the records, the Court is of the view that Smt. Sapna Jain should be added as a party Defendant. The reasons for this conclusion are as follows. The sale deed dated 10th December, 2012 executed by Defendant No. 1 in favour of Smt. Sapna Jain is in the teeth of the specific directions issued by the Division Bench in its order dated 15th May 2012. The operative portion of the said order as extracted above, very clearly states that if "Satya Devi intends to sell the property, before selling the same, she would file an application along with an affidavit disclosing the name of the buyer, the address of the buyer and the price at which she has agreed to sell the subject property" (emphasis supplied). It is therefore clear that Smt. Satya Devi was expected to file an application with an affidavit in the Court, disclosing the name, address of the buyer/purchaser and price at which he has agreed to sell the suit property prior to such sale.

21. This was not meant to be an empty formality. It was meant to be strictly complied with. The key words in the above direction are "intends to sell" and "before selling the same". In other words, there was to be some reasonable time

between the filing of the above application and affidavit, and the actual sale of the suit property. The stand taken by Smt. Satya Devi in her reply to I.A. No. 3499 is as under:

....It is stated that Smt. Sapna Jain was not aware of the present suit till she received notice from the Hon''ble Court of the present application sometime in the last week of March 2013. It is further stated that Smt. Sapna Jain upon receipt of the notice from the Hon''ble Court, contacted Smt. Satya Devi through the broker Sh. Sanjay Jain and mediator Dr. Chhavi Prakash, who brokered the deal. During discussions, it was informed that Smt. Satya Devi who owned the suit property, due to her old age and ill-health had been dealing through the said Dr. Chhavi Prakash and Sh. S.K. Jain and has informed them about the proceedings of the present suit. These persons did not deem it fit to inform Smt. Sapna Jain about the pendency of the suit, as at the time of negotiations and finalization of deal, there was no stay on the sale of the suit property and Smt. Satya Devi was legally free to sell the suit property to Smt. Sapna Jain. It is stated that Smt. Sapna Jain has purchased the property bonafidely and in good faith without any knowledge of any kind of litigation between the plaintiff and their mother Smt. Satya Devi.

(emphasis supplied)

22. Therefore, the above stand of Smt. Sapna Jain falsifies the affidavit dated 7th December 2012 filed by Smt. Satya Devi along with her application dated 10th December 2012. This further compounds the disobedience of the order dated 15th May 2012.

23. IA No. 22320 of 2012 u/s 151 CPC was filed by the Defendant on 10th December 2012 on the very date on which the sale deed was executed. The affidavit of Defendant No. 1 dated 7th December, 2012, filed along with the application, disclosed the name and address of the buyer to whom the Defendant No. 1 had agreed to sell the suit property. It also stated that "the buyer has been informed about the pendency of the suit and the interim order passed by the learned Single Judge. However, this was not filed in the Court before the execution of the sale deed. It was filed on the same date as the sale deed, thus defeating the very purpose of the order dated 15th May, 2012.

24. The above facts disclosed that the sale of the suit property by Defendant No. 1 in favour of Smt. Sapna Jain cannot be said to be bonafide.

25. Since considerable reliance was placed by Mr. Sindhvani, learned Senior counsel for the buyer, on the decision of the Division Bench of this Court in V.N. Verma v. Veena Mahajan, the Court would like to discuss the said decision in some detail. The facts in that case were that the Respondent in the appeal, Smt. Veena Mahajan, ("VM"), had filed a suit on 29th April 1988 seeking specific performance of an agreement to sell dated 14th February 1986 alleging that she had paid the Appellant, Smt. V.N. Verma ("VNV"), a sum of Rs. 40,000 and that VNV was obliged to sell plot bearing No. 40, Chitra Vihar to her for a total sale

consideration of Rs. 1,50,000 and that balance sale consideration had to be made when VNV was in a position to deliver vacant possession of the plot to her (VM). Thereafter, on 21st January 1987, VM paid a further sum of Rs. 10,000 to VNV. Since the plot in question had only been allotted to VNV, and a formal document conveying title to VNV by the Delhi Development Authority ("DDA") had not been executed, it was agreed that after the lease deed was executed by DDA in favour of VNV, the necessary payment would be made by VM to VNV. Thereafter, Rs. 15,000 and Rs. 5,000 were paid by VM to VNV on 29th September 1987 and 20th November 1987 respectively. On 30th November 1987 a perpetual lease deed was executed by the DDA in favour of VNV. However, despite notice, VNV did not come forward to execute the sale deed transferring title to VM and receive balance sale consideration. VM filed a suit for specific performance. During the pendency of the suit the Applicants, Meena Rani Gupta and Nalini Gupta, filed an application, CM No. 2058 of 1998, seeking impleadment stating that VNV entered into an agreement with one Kamlesh Gupta on 21st January 1988. After receiving the full consideration, he handed over the possession of the suit property to Kamlesh Gupta. On 26th November 1990 Kamlesh Gupta handed over possession of the property to the Applicants, Meena Rani Gupta and Nalini Gupta, under an agreement to sell of the even date. It is only on 7th December 1998 that the said Applicants came to learn about the pendency of the suit filed by VM and filed the aforesaid application seeking impleadment alleging that they were in the process of constructing a boundary wall and caretaker room on the plot, when at site the Applicants were served with a copy of the decree passed against VNV.

26. The Division Bench, therefore, first dealt with the application seeking impleadment filed under Order 1 Rule 10 CPC. A reference was made by the Division Bench to the decision of the Supreme Court in Razia Begum Vs. Sahebzadi Anwar Begum and Others, in which inter alia it was held that "in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation." It was further observed that "the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy." The Division Bench next referred to the decision in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, wherein in para 14 the Supreme Court observed as under:

The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be

settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a Defendant a person whose only object is to prosecute his own cause of action.

27. The Division Bench referred to certain English decisions which explained the rule that where the presence of the third party was sought, it must be necessary to enable the court to adjudicate completely the subject matter in dispute "as the enjoyment of the legal right of the third party would be curtailed by the relief asked for by the plaintiff in the action." In para 29, the Division Bench concluded as under:

29. Applying the aforesaid principle of the nature of interest which has to be considered as likely to be affected in a suit for specific performance of an agreement to sell, where a subsequent purchaser seeks to intervene, suffice would it be to state an agreement for sale does not create any right, title or interest in the property and the action is one in personam against the seller and thus the presence of a person who claims to have entered into a subsequent agreement to sell with seller, would not be a necessary party as his presence is not necessary to settle all the questions which arise in the suit.

28. The aforementioned decision is distinguishable on facts. In the first place, there was no specific direction issued by the Court on the fulfilment of certain conditions before the property could be sold during the pendency of the suit. The conditions imposed by the Division Bench in its order dated 15th May 2012 in the present case on Defendant No. 1 could be characterised as "lis pendens plus". Secondly, in the instant case, Defendant No. 1 has acted in deliberate violation of the said conditions rendering the sale to Smt. Sapna Jain of questionable validity. Thirdly, the presence of the buyer is absolutely necessary as the versions of the Defendant No. 1 and the buyer on whether the buyer was aware of the pendency of the present proceedings are at complete variance. The dispute in this regard will require to be resolved only through evidence of the parties and in particular that of the buyer. Fourthly, if the sale to the buyer is found to be in violation of the order of the Court, it is liable to be cancelled and such an order cannot be passed without making the buyer a party and giving her an opportunity of being heard.

29. Likewise in the decision in Sarvinder Singh v. Dalip Singh relied upon by Mr. Sindhvani, the Appellant before the Supreme Court filed a suit for declaration that he was the owner of the property on the basis of a registered Will dated 26th May 1952 executed by his mother. During the pendency of the suit, an ad interim injunction granted came to be vacated on 2nd December 1991 on which date the Defendants sold the suit properties which were registered in favour of

the Respondents. Thereafter, the Purchasers filed an application under Order 1 Rule 10 CPC seeking impleadment. It came to be dismissed by the learned Trial Court which held that they were neither necessary nor proper parties to the suit. The High Court reversed the said order and therefore, the Plaintiff appealed to the Supreme Court. It was observed as under:

A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt. Hira Devi. Moreover, admittedly the respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on December 2, 1991 3rd December 12, 1991, pending suit.

Section 52 of the Transfer of Property Act envisages that "during the pendency in any Court having authority within the limits of India of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose." It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of *lis pendens* by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

30. The aforementioned judgment by a Division Bench of the Supreme Court reiterated the settled position as regards the doctrine of *lis pendens* in terms of Section 52 of the Transfer of Property Act. However, the distinguishing features of the present case, which is one of *lis pendens* plus, are absent in the decision in *Sarvinder Singh v. Dalip Singh*.

31. In *Thomson Press (India) Ltd. v. Nanak Builders & Investors P. Ltd.* the Supreme Court discussed the purport of Order 1 Rule 10 CPC and Order XXII Rule 10 CPC. In the concurring opinion of Thakur, J and it was observed as under:

11. A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether

independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party defendant and, if so, on what terms.

32. Thereafter, a reference was made to the decision in *Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others*, where the Court held that the position of the subsequent buyer during the pendency of the suit was similar to that of the position of an heir or a legatee of the party who dies during the pendency of the suit or a proceeding. Any such heir, legatee or transferee cannot be turned away when an application by such person for being added as a party to the suit. Reference was also made to *Amit Kumar Shaw and Another Vs. Farida Khatoon and Another*, where in para 16 it was observed as under:

16... 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 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

33. In the lead judgment of M.Y. Eqbal J., the case law was extensively discussed. On the facts of the case it was noted that despite an undertaking given to the Court by the Defendants in that case, a sale deed has been executed in favour of the Appellants who then filed an application under Order 1 Rule 10 CPC for being impleaded as a party to the suit. The said application was rejected by the learned Single Judge and that order was affirmed by the Division Bench.

On appeal, the Supreme Court reversed the said orders. The Court referred to the earlier decision in *Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others*, in which the applicable principles were summarized as under:

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:

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.
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.
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.
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.
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.

However, if the applicant is guilty of contumacious conductor 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.

34. The above decision of the Supreme Court makes it clear that a "necessary party" is a person who ought to be joined as party to the suit and without whose presence an effective decree cannot be passed by the Court. More importantly it was explained that even if the purchaser might be one who may "not be a person in favour of or against whom a decree is to be made", he might need to be impleaded as a party. Likewise in *Dhanalakshmi and Others Vs. P. Mohan and Others*, the Supreme Court held on similar facts that the buyers were necessary and proper parties. In *Marirudraiah and Others Vs. B. Sarojamma and Others*, , during the pendency of the partition suit, the purchasers of one of the suit properties were impleaded as party Respondents. In *A.K. Chatterjee Vs. Ashok Kumar Chatterjee*, , during the pendency of the suit for partition, the suit property was sold and the purchasers sought impleadment by filing an

application under Order XXII Rule 10 CPC. A learned Single Judge of this Court held that the purchasers were entitled to be impleaded as party/Defendant since a decision in the suit in their absence would be "no decision at all".

35. In the present case Defendant No. 1 violated the order dated 15th May 2012 passed by the Division Bench by executing a sale deed in favour of Smt. Sapna Jain, without giving prior intimation to the Court. Going by the version of Smt. Sapna Jain the second violation was in not informing Smt. Jain about the pendency of the present suit and the orders passed therein. Defendant No. 1 has made a false statement in her application IA No. 22320 of 2012 filed on 10th December 2012 that she only intended to sell the suit property when in fact on that very date she executed a sale deed in favour of Smt. Sapna Jain. Even in the reply to the application (IA No. 22699 of 2012) filed by the Plaintiffs, Defendant No. 1 suppressed the fact of the sale deed dated 10th December 2012. It was falsely asserted by the Defendant No. 1 in the said reply that in the affidavit earlier filed dated 7th December 2012 she had stated that she had "sold the property to the buyer".

36. The Court is prima facie satisfied that the transaction of the sale of the suit property in favour of Smt. Sapna Jain by the sale deed dated 10th December 2012 is not bonafide and that it is in violation of the order dated 15th May 2012 of the Division Bench. Consequential orders concerning the said sale deed will be required to be passed in the suit and that cannot be done without impleading Smt. Sapna Jain as a party in the suit and affording her an opportunity of being heard and leading evidence in her defence. The Court concludes that Smt. Sapna Jain is a necessary and property party in Suit No. 2014 of 2011 as in her absence it will not be possible for the Court to effectively and properly adjudicate upon all the issues that arise in the suit. In her absence an effective decree cannot be passed. In other words, although Smt. Sapna Jain "may not be a person in favour of or against whom a decree is to be made" in the suit for partition, her presence is necessary for "effective and complete adjudication of the issues involved in the suit.

37. It was repeatedly urged on behalf of Smt. Sapna Jain that she should be free to deal with the suit property as its absolute owner unfettered by any restraint order. This is one more reason why she should be made a party and be subject to a restraint order since in the absence of such a restraint there is every likelihood of the suit property being further sold to third party purchasers without knowledge of the pendency of these proceedings. That would lead to avoidable multiplicity of proceedings which would frustrate the orders of the Court and cause serious prejudice to the rights of the Plaintiffs.

38. For the aforementioned reasons, the Court directs as under:

(i) Since the information/affidavit tendered by Defendant No. 1 has been taken on record, subject to the findings hereinabove, IA No. 22320 of 2012 is disposed of. IA No. 22699 of 2012 does not survive and is disposed of as such.

(ii) IA No. 3497 of 2013 is allowed and Smt. Sapna Jain in whose favour the sale deed dated 10th December 2012 has been executed is impleaded as Defendant No. 5 in suit CS (OS) No. 2014 of 2011. Amended memo of parties be filed within one week;

(iii) The newly added Defendant No. 5, Smt. Sapna Jain, is permitted to file a written statement within four weeks. Replication thereto, if any, be filed within four weeks thereafter;

(iv) IA No. 3498 of 2013 is disposed of directing that during the pendency of the suit, Defendant No. 5, Smt. Sapna Jain, her agents, servants, employees, legal heirs, nominees, assigns etc. Shall be restrained from selling, transferring, alienating and/or transferring or creating any third party right in the suit property, till the final disposal of the suit;

(v) Defendant No. 1 will deposit in Court within six weeks the entire sale consideration received by her from Smt. Sapna Jain, i.e., the newly added Defendant No. 5. The amount when deposited will be kept in a fixed deposit by the Registry initially for a period of six months and thereafter be kept renewed till further order;

(vi) As regards IA No. 3499 of 2013, the Court is prima facie of the view that there has been a wilful disobedience of the order dated 15th May 2012 passed by the Division Bench in FAO (OS) No. 203 of 2012. Notice is now issued to the Defendant No. 1 Smt. Satya Devi and Defendant No. 5, Smt. Sapna Jain, to show cause as to why they should not be held liable under Order XXXIX Rule 2A CPC and also as to why further consequential orders should not be passed in relation to the suit property and restoration of the status quo ante its sale to Defendant No. 5.

(vii) Defendant Nos. 1 and 5 shall file their respective affidavits in response to the above show cause notice within four weeks from today, with advance copy to learned counsel for the Plaintiffs and other Defendants. Rejoinders thereto, if any, be filed before the next date of hearing.

(viii) List I.A. No. 3499 of 2013 for further hearing on 24th September 2013.

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39. List before the Joint Registrar 31st August 2013 for admission/denial of the documents. The parties will file their respective affidavits of admission/denial and produce their respective original documents before the JR. List before the Court on 24th September 2013 for framing of issues.