
(2012) 11 DEL CK 0166
In the Delhi High Court
Case No : CS (OS) 1448 of 2012

Navneet Singh Anand

APPELLANT

Vs

Naveen Sareen and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 39 Rule 1, Order 39 Rule 2, 151
Specific Relief Act, 1963 — Section 15, 19

Citation : (2012) 11 DEL CK 0166

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Ashish Aggarwal and Mr. Varun Sharma, for the Appellant; Ajay Diggpaal and Ms. Arti Bansal, Advocates for the applicant in IA No. 13060 and 13072/2012 and Ms. Hetu Arora Sethi, for D-1 to 3, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.

IA No. 13060/2012 (under Order 1 Rule 10 CPC) in CS(OS) 1448/2012

And

IA No. 13072/2012 (under Order 1 Rule 10 CPC) in CS(OS) 1449/2012

1. CS(OS) No. 1448/2012 is a suit for specific performance of the agreement to sell alleged to have been executed by Shri Madan Lal Sarin agreeing to sell his 1/4th undivided share in the property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027 to the plaintiff for a consideration of Rs. 2.25 crore, on 10.5.2008.

The case in CS(OS) No. 1449/2012 filed by the same person who is plaintiff in CS(OS) No. 1448/2012 is that vide agreement to sell dated 2.10.2008, the defendants in this suit had agreed to sell their 1/4th undivided share in the

property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027 to him for a consideration of Rs. 2.60 crore. The plaintiffs are seeking specific performance of that agreement in this suit.

Shri Madan Lal Sarin died on 1.11.2011 and the defendants are his legal heirs. These applications have been filed by Mr. Dinesh Sareen and Mr. Bharat Sareen, both sons of late Shyam Lal Sareen, seeking their impleadment in the suit. The applicants are the legal heirs of late Shyam Lal Sareen and they also claim to be the co-owners in the property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027. The applications are opposed by the plaintiff.

It is an admitted position that the property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027 was owned by four brothers namely Shri Madan Lal Sareen, Shri Satish Chander Sareen, Shri Ramesh Chander Sareen and Shri Shyam Lal Sareen. It is also an admitted position that neither the applicants nor their father was a party to the agreement to sell dated 6.5.2008 executed by late Madan Lal Sareen in favour of the plaintiff. The partition of the property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027 by metes and bound has not taken place so far amongst its co-owners. A civil suit has been filed by the applicant which is pending before the Civil Court at Jammu and a stay order is stated to have been passed by that Court against the alienation of this suit property. Another suit has been filed in Delhi for partition of the suit property by metes and bounds.

2. As a general principle of law, the plaintiff being dominus litis, it is for him to chose the persons against whom he wants to litigate and ordinarily he cannot be compelled to implead a person against whom he did not seek any relief but, this general rule, as observed by the Supreme Court in *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others*, is subject to the provision of Order 1 Rule 10(2) of the CPC, which provides for impleadment of proper and necessary parties. This provision confers a power on the Court to direct to direct addition of a person, who ought to have been joined as a party to the suit but has not been joined, or a person, whose presence before the Court may be necessary in order to enable it to effectively and completely adjudicate upon and settle the questions involved in the suit as a party to the suit. A person, who ought to have been joined as a party to the suit and in whose absence, no effective decree can be passed by the Court, is a necessary party whereas a person is a proper party though not a necessary party if his presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit even though no relief against him has been claimed in the suit.

3. In *Kasturi Vs. Iyyamperumal and Others*, . In that case, the appellant had filed a civil suit against respondent Nos. 2 and 3 for specific performance of contract, entered into between him and respondent Nos. 2 and 3. Respondent Nos. 1 and 4 to 11, who were not parties to the contract and were setting up a claim of independent title and possession over the contracted property filed an application

to implead them as defendants. The trial Court allowed them to be added as parties and its decision was upheld by the High Court. Reversing the decision of the High Court, Supreme Court held that stranger to the contract namely respondent Nos. 1 and 4 to 11, who were making claims independent and adverse to the title of respondent Nos. 2 and 3 were neither necessary nor proper parties and, therefore, were not entitled to join as party defendants to the suit for specific performance of contract for sale. The Supreme Court was of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. During the course of the judgment, Supreme Court, inter alia, observed as under:-

11. As noted herein earlier, 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 into 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...They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In the case of Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, , it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

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.

(emphasis supplied)

15....As noted herein earlier, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of

the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted herein earlier that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law.

15... As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted herein earlier, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

In *Bharat Karsondas Thakkar Vs. Kiran Construction Co. and Others*, , the Supreme Court observed as under:

28. Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision

of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title.

Therefore, being strangers to the agreement, the applicants are neither necessary nor proper parties to these suits.

The applicants themselves admit that late Shri Mohan Lal Sareen had 1/4th share in the property bearing number A-33, Vishal Enclave, Vishal Cinema Road, New Delhi-110 027. Therefore, it would be difficult to dispute that he had the right to sell or enter into an agreement to sell in respect of his undivided share in the aforesaid property. The pendency of the suit for partition by metes and bounds would not come in the way of a decree being passed in the present suit. Similarly, if there is an injunction against alienation of the suit property, by the Court at Jammu, the implication of such an order would be considered at an appropriate stage, in the event of the suit being decreed and the injunction being still in force at that time. But, as far as the applicants are concerned, they are neither necessary nor proper party to the present suit.

The applications are devoid of any merits and are hereby dismissed.

IA No. 19984/2012 (under Section 151 CPC of D-1 for Condonation of delay in filing WS) in CS(OS) 1448/2012

And

IA No. 20240/2012 (under Section 151 CPC of D-1 and 2 for condonation of delay in filing WS) in CS(OS) 1449/2012

Written statement in CS(OS) 1448/2012 case has been filed so far only by defendant no. 1. There is delay of 40 days in filing the written statement by defendant no. 1. The delay in filing the written statement by defendant no. 1 in this suit is condoned subject to payment of Rs. 10,000/- as costs.

Written statement in CS(OS) 1449/2012 has been filed so far only by defendant no. 1 and 2. There is delay of 40 days in filing the written statement by defendant no. 1 and 2. The delay in filing the written statement by defendants no. 1 and 2 in this suit is condoned subject to payment of Rs. 10,000/- as costs.

Both the applications stand disposed of.

CS(OS) 1448/2012 & IA No. 9587/2012 (under Order 39 Rule 1&2 CPC)

And

CS(OS) 1449/2012 & IA No. 9598/2012 (under Order 39 Rule 1&2 CPC)

Defendants who have not filed the written statement so far are granted last

opportunity to file the same within two weeks subject to payment of Rs. 5,000/- as costs. Replication can be filed four weeks thereafter.

List before the Joint Registrar on 12.2.2013 for admission/denial of documents.

The matters be listed before the Court on 6.3.2013 for framing of issues and disposal of IAs.