
(2008) 01 CAL CK 0020
In the Calcutta High Court
Case No : C.O. No. 3291 of 2007

Padmavati Estate Pvt. Ltd.

APPELLANT

Vs

Sm. Kusum Agarwal and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 16
Transfer of Property Act, 1882 — Section 52

Citation : (2008) 1 CALLT 331 : (2008) 2 CHN 267

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Arindam Banerjee and S. Banerjee, for the Appellant; Partha Sarathi Basu and S. Bagchi for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—This revisional application under Article 227 of the Constitution of India is directed against an order being No. 222 dated 2nd August, 2007, passed by the learned Civil Judge (Senior Division), 1st Court Alipore in Title Suit No. 102 of 1987 whereby the petitioner's application for addition of party in a suit for specific performance of contract filed by the plaintiff/opposite party against the defendants/opposite parties, was rejected by the learned Trial Judge on contest.

2. The petitioner is admittedly a transferee pendente lite who purchased the suit property from the defendants/opposite parties by registered deed of conveyance dated 30th September, 2003. The petitioner claims that the petitioner purchased the suit property for a valuable consideration.

3. The petitioner further claims that the petitioner is in possession of the suit property since the time of its purchase. After coming to know of the pendency of this suit from the vendor, the petitioner filed application for its addition as

defendant in the said suit. Such application was filed under the provision of Order 1 Rule 10 of the Code of Civil Procedure.

4. Admittedly, there was no injunction against alienation of the suit property at a point of time when the suit property was transferred by the defendants/opposite parties in favour of the petitioner.

5. Thus, the petitioner claims that the petitioner stepped into the shoes of its vendor and thus acquired locus to contest the suit after being impleaded as defendant in the said suit.

6. Such prayer for addition of the petitioner having being rejected by the learned Trial Judge, the petitioner has filed the instant revisional application.

7. While dismissing the petitioner's said application, the learned Trial Judge held that since the authority and/or order of the Court was not obtained for such alienation of the suit property, alienation of the suit property in favour of the petitioner is hit by the provision of Section 52 of the Transfer of Property Act and as such the petitioner cannot be considered as an appropriate or necessary party to the suit. In short, the learned Trial Judge held that a transferee pendente lite is bound by the b decree and as such the petitioner is not a necessary party to the suit.

8. The learned Trial Judge further held that when the defendants are contesting the said suit with utmost sincerity and diligence, the petitioner cannot be added as a party unless the petitioner explains as to how the right of the petitioner will be affected, if the petitioner is not added as a party to the suit. The learned Trial Judge rejected the petitioner's application for addition of party by holding that the petitioner is not a necessary party to the suit.

9. The propriety of such an order is under challenge in this revisional application at the instance of the applicant/petitioner.

10. Let me now examine as to how far the learned Trial Judge was justified in rejecting the petitioner's application for addition of party in the facts of the instant case.

11. Heard Mr. Banerjee, learned Advocate, appearing in support of this revisional application and Mr. Basu, learned senior advocate, appearing on behalf of the plaintiff/opposite party (caveator).

12. Several decisions of the Hon''ble Supreme Court were cited at the bar in support of the respective contentions of the parties. The decisions which were cited before this Court are as follows:

(i) Surjit and others Vs. Harbans Singh and others etc. etc.,

(ii) Sarvinder Singh Vs. Dalip Singh and Others,

(iii) Savitri Devi Vs. District Judge, Gorakhpur and Others,

- (iv) Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another,
- (v) Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, and
- (vi) Sanjay Verma Vs. Manik Roy and Others,

13. In the case of Surjit Singh and Ors. (supra), Sautri Devi (supra) and Sanjay Verma (supra) there were some distinguishing features from the facts of the instant case, as in all those cases the pendente lite transferee purchased the suit property in violation of an interim order of injunction against alienation. In the other decisions, as mentioned above, purchase was not made by the pendente lite transferee in violation of the interim order of injunction against alienation.

14. But, in all the aforesaid decisions, the Hon"ble Supreme Court held uniformly that the purchase of the suit property by a pendente lite transferee without the authority of the Court is hit by the provision contained in Section 52 of the Transfer of property Act and since such transfer is hit by Section 52 of the Transfer of Property Act, prayer for addition of such transferee pendente lite depends upon the discretion of the Court under Order 22 Rule 10 of the Civil Procedure Code.

15. Of course, it has been held by the Hon"ble Supreme Court in the case of Amit Kumar Shaw (supra) that such discretion should be exercised judicially and the alienee would ordinarily be joined as a party to enable him to protect his interest as a representative-in-interest of the party from whom he has acquired the interest during the pendency of the suit. It was further held therein that though the plaintiff is not required to add such transferee as party to the suit but such transferee may be added on his application to protect his interest and in case of delayed application, such prayer can be allowed only when the reasons for the delay is sufficiently explained.

16. Here in the instant case, the petitioner never claimed in its application for addition of party that the petitioner is a bona fide transferee for a valuable consideration and it purchased the suit property in good faith without notice of suit. In the absence of such a plea of bona fide transferee for value in good faith, the sale in favour of the pendente lite transferee created no interest in the property.

17. The petitioner simply claims herein that it is a bona fide transferee for value and is in possession of the property since the time of its purchase.

18. Such plea of bona fide purchaser for value without the plea of purchase in good faith and without notice of suit does not create any independent right in favour of the pendente lite transferee in the suit property.

19. Thus, if no independent interest is created in the suit property in favour of the pendente lite transferee by virtue of such purchase, this Court has no hesitation to hold that such pendente lite transferee whose purchase is hit by Section 52 of the Transfer of Property Act cannot be impleaded as a party in suit

for specific performance of contract where the only consideration before the Court is to find out as to whether there is any enforceable contract between the parties and further as to whether the plaintiff succeeded in proving his readiness and willingness for purchasing the suit property as per Section 16(c) of the Specific Relief Act.

20. In my view, for adjudication of the aforesaid dispute, the presence of the pendente lite transferee is not at all necessary. That apart, since no independent right has been created in its favour for the reason as aforesaid, its presence is also not necessary to protect its purchase as the petitioner being a pendente lite transferee will be bound by the decree which will be passed in the suit. Thus, the petitioner is neither a necessary party nor a proper party in the present suit.

21. That apart, the defendants/opposite parties are contesting the said suit with utmost sincerity by filing written statement and additional written statement therein. No apprehension regarding collusion between the plaintiff and the defendants has been expressed by the petitioner in its application for addition of party.

22. The suit has already matured for hearing and is now at the stage of peremptory hearing. At this state, the petitioner filed an application for addition of party almost four years after the date of its purchase without giving any explanation for such delay in filing such application before the learned Trial Judge or even before this Court. No specific date has been mentioned as to when the petitioner came to know of the suit from its vendor.

Such unexplained delay also stands in the way of allowing the petitioner's application for addition of party in view of the decision of the Hon'ble Supreme Court in the case Amit Kumar Shaw (supra).

23. In the aforesaid facts and circumstances, this Court does not find any justification to interfere with the order impugned which was passed by the learned Trial Judge in exercise of his sound judicial discretion.

24. In my view, the application for addition of party is not a bona fide application and the same was filed only with a definite intention to prolong the litigation for an unknown duration.

The revisional application, thus, stands rejected.

There will be, however, no order as to costs.

Urgent xerox certified copy of this Judgment, if applied for, be given to the parties, as expeditiously as possible.