
(2013) 01 AHC CK 0269

In the Allahabad High Court

Case No : Miscellaneous Single No. 4252 of 1982

Rajendra Singh Gahlaut and Another

APPELLANT

Vs

Registrar Cooperative Societies, U.P Lucknow

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Transfer of Property Act, 1882 — Section 52

Uttar Pradesh Co-operative Societies Act, 1965 — Section 17

Citation : (2013) 01 AHC CK 0269

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.

(C.M.A. No. 107999 of 2012)

Heard Sri P.K. Khare, learned counsel for petitioner and Sri U.K. Srivastava, learned counsel appearing on behalf of O.P. No. 3/1 on an application (C.M.A. No. 107999 of 2012).

Facts in brief of the present case that there is a society known as Lucknow Officer's Cooperative Housing Society Ltd., Lucknow (hereinafter referred to as the Society) and the said society had obtained certain land in Outram Road, Hazratganj from one Sri R.F. Bahadurji and thereafter a layout programme was prepared.

So far as the present case is concerned, the controversy relates to allotment of plot No. 16 of the Society. In respect to the said plot, an arbitration reference under Section 17 of the U.P. Cooperative Societies Act, 1965 has been made to the competent authority who has given the award dated 19.12.1980, challenged by way of appeal before the Registrar, Cooperative Societies, set aside by order dated 05.06.1982, thereafter, the order dated 05.06.1982 has been challenged by means of the present writ petition impleading one Sri B.S. Bajpai as O.P. No.

3 who died during the pendency of the matter, substituted by Sri Ajay Kumar Mishra as O.P. No. 3/1 in view of the order dated 28.09.2010 passed by this Court.

During the pendency of the present matter, petitioner on 17/18, October, 2012 moved an application (C.M. A. No. 9447 of 2007) for impleadment of Secretary, Lucknow Development Authority, Lucknow as respondent No. 5. On the said application, on 07.12.2012, following order has been passed:

"Learned counsel for the respondents pointed out that this impleadment application is not supported with affidavit as from swearing and verification clause it is clear that the affidavit is incomplete and the contents of the affidavit has not been verified.

In view of the facts, since the application is not supported with the affidavit, the same is hereby rejected as not pressed.

List this petition for final disposal before appropriate Court. The learned counsel for the petitioner is free to file fresh application or if at the time of hearing it is found that Lucknow Development Authority is necessary party then with permission of the court, the L.D.A. can be impleaded as respondent."

Thereafter, the present application (C.M.A. No. 107999 of 2012) has been moved by the petitioner for impleading Secretary, Lucknow Development Authority, Lucknow as respondent No. 5.

Sri P.K. Khare, learned counsel for petitioner in pursuance to the averment as made in paragraph Nos. 9, 10 and 12 of the affidavit filed in support of the said application which quoted hereinunder has made submission that Secretary, Lucknow Development Authority, Lucknow is a necessary party for disposal of the controversy involved in the present case.

"Para No. 9 That, in utter disregard to the interim order passed by this Hon"ble Court in the above noted writ petition, one alleged Secretary of the Society vide its letter dated 12.12.1995 issued to one Mr. Ajay Kumar Mishra, regarding confirmation that his name has been recorded as owner of plot no. 16 and further asked him to get the sub lease done in his favour through Nazur Department, Lucknow Development Authority.

Para No. 10 That, petitioner received an RTI reply dated 25.11.2009, from Assistant Housing Commissioner that as per records of the society available in the office from 1994 no committee of society was in existence, hence there is no question of any validly elected Secretary of the society.

Para No. 12 That the petitioner on 03.10.2012 had received copy of lease deed dated 29.09.1998 executed in favour of Ajay Kumar Mishra by Nazur Officer, Lucknow Development Authority."

Sri U.K. Srivastava, learned counsel appearing on behalf of respondent No. 3/1, Sri Ajay Kumar Mishra, in rebuttal, submits that as in the present case, the

matter is arising out of an award given by Arbitrator under the provisions as provided under Cooperative Societies Act which has been set aside by the Registrar by means of the order dated 05.06.1982 (Annexure No. 25), so Secretary, Lucknow Development Authority, Lucknow is not a necessary and proper party for adjudication of the dispute involved in the present case, hence the application is liable to be dismissed.

Thus, after hearing learned counsel for parties and going through the record, the core question which is to be decided is whether Secretary, Lucknow Development Authority, Lucknow is a necessary and proper party for adjudication of the dispute involved in the present case.

In order to find the answer to the abovesaid question, it will be appropriate to go through the law as laid down by Hon'ble the Apex Court in the case of *Kasturi Vs. Iyyamperumal and others*, 2005 (6) SCC 733 and in the case of *Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and Others*, 2012 (8) SCC 384, wherein Hon'ble the Apex Court has laid down the test in respect to impleadment of a party by taking into consideration the provisions as provided under Order 1 Rule 10(2) CPC.

Further, in the case of *Kasturi Vs. Iyyamperumal and others*, 2005 (6) SCC 733, in para Nos. 6, 7, 11, 12 and 13 held as under:

"Para No. 6 Let us therefore confine ourselves to the provision of Order 1 Rule 10 subrule (2) of CPC which has already been quoted hereinabove. From a bare perusal of subrule (2) of Order 1 Rule 10 of the CPC, we find that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of subrule(2) Order 1 Rule 10 of the CPC empowers the Court to add a person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

Para No. 7 In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 subrule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the

claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

Para No. 11 As noted hereinafter, 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. Lord Chancellor Cottenham in *Tasker v. Small* 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

Para No. 12 The aforesaid decision in 40 E.R. 848 was noted with approval in (1886) 2 Ch. 164 (*De Hogton v. Money*) at page 170 Turner, L.J. observed:

"Here again his case is met by (1834) 40 E.R. 848 in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed."

Para No. 13 From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

Recently, in the case of Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and Others, 2012 (8) SCC 384, Hon''ble the Supreme Court while interpreting the provisions as provided for impleadment of parties after placing reliance on its earlier judgments, namely, Savindra Singh Vs. Dilip Singh, 1996 (5) SCC 539 etc., taking into consideration Section 52 of the Transfer of Properties Act held as under:

"The respondents indisputably cannot challenge the legality or the validity of the Will executed and registered by Hira Devi on 265 1952. Though it may be open to the legal heirs of Rajender Kaur, who was a party to the earlier suit, to resist the claim on any legally available or tenable grounds, those grounds are not available to the respondents. Under those circumstances, the respondents cannot, by any stretch of imagination, be said to be either necessary or proper parties to the suit. 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 2121991 and 12 121991, pending suit."

Section 52 of the Transfer of Property Act envisages that:

" Section 52 Transfer of Property pending suit relating thereto 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 rights 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." (emphasis supplied)

In Bibi Zubaida Khatoon Vs. Nabi Hassan (2004) 1 SCC 191, Hon"ble the Supreme Court was called upon to consider the correctness of the High Court's order, which declined to interfere with the order passed by the trial Court dismissing the applications filed by the appellant for impleadment as party to the cross suits of which one was filed for redemption of mortgage and the other was filed for specific performance of the agreement for sale. While dismissing the appeal, this Court referred to the judgments in Savindra Singh Vs. Dilip Singh (supra) and Dhurandhar Prasad Singh Vs. Jai Prakash University (2001) 6 SCC 534 and observed that there is no absolute rule that the transferee pendente lite shall be allowed to join as party in all cases without leave of the Court and contest the pending suit.

Further, in the case of Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and Others, 2012 (8) SCC 384, Hon"ble the Supreme Court held 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.
6. However, if the applicant is guilty of contumacious conduct or 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.

Keeping in view the abovesaid guidelines laid down by Apex Court in the case of Kasturi Vs. Iyyamperumal and others, 2005 (6) SCC 733 and in the case of Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and Others, 2012 (8) SCC 384 and applying the same into facts and circumstances of the present case and taking into consideration the plea as taken by the petitioner for impleading the Secretary, Lucknow Development Authority, as O.P. No. 5 in the present case, I do not find any good ground or reason to implead Secretary, Lucknow Development as respondent in the present case as no effective relief has been sought against the Lucknow Development Authority in the present case because in the present matter the order under challenge is the order passed in appeal by a Registrar, setting aside the award given by the Arbitrary, so Lucknow Development Authority is neither a necessary nor proper party for adjudication of the dispute involved in the present case.

For the foregoing reasons, the application in question is rejected.