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**(2008) 05 AHC CK 0209**  
**In the Allahabad High Court**

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| Shahab Mohammed Khan and Another           | APPELLANT  |
| Vs                                         |            |
| A.D.J./Special Judge (E.C. Act) and Others | RESPONDENT |

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**Date of Decision :** 15-05-2008

**Acts Referred:**

Transfer of Property Act, 1882 — Section 52

**Citation :** (2008) 4 AWC 3536

**Hon'ble Judges :** Rajiv Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Rajiv Sharma, J.—In the instant case, the sole controversy involved is as to whether the order passed by the revisional court setting aside the order passed by the trial court, which has allowed the application of the petitioners for impleadment is legally justified or not.

Heard Sri Javed Murtaza, learned Counsel for the petitioner, Sri M. Naseerullah and Sri P.C. Srivastava, counsel appearing for the opposite parties.

2. Before advertng to the aforesaid question, It would be apt to mention certain brief facts of the case, which are that J.J. Rice initiated a suit for declaration impleading therein Mr. S.B. Caleb as defendant and the same was registered as Regular Suit No. 337 of 1988. The said suit was decreed vide judgment and decree dated 5.1.1991. Opposite party No. 3 Shakeel Ahmad Khan of present writ petition, who was an allottee of the portion of the house as tenant and in possession, filed a suit for cancellation of said decree and for grant of permanent injunction in the Court of Civil Judge, Lucknow, which was registered as Regular Suit No. 259 of 1992, seeking following relief:

(a) That the judgment and decree dated 5.1.1991, passed in Regular Suit No. 337 of 1988, J.J. Rice v. S.B. Caleb by Vth Additional Civil Judge. Lucknow be cancelled and set aside.

(b) That all the defendants, their heirs, agents or representatives be restrained permanently from evicting the plaintiff from northern half portion of House No. 36, Cantonment Road, Lucknow [Municipal No. 119/160 Ka, Qandhari Baar, Lucknow] holding that the plaintiff is residing in the house in question in his own rights as has perfected the right of adverse possession by completion of the period adverse possession for more than 17 years.

3. Opposite party No. 6 J.J. Rice is claiming himself to be the owner of the house on the basis of decree dated 5.1.1981. He had sold the house in question to Smt. Sharmila Rals wife of Raisullah Khan vide registered sale deed dated 31.8.1996. Smt. Sharmila thereafter sold the said house in favour of Smt. Shafqat Bano and Yusuf Pasha, opposite party Nos. 4 and 5, in the present writ petition, vide sale deed dated 12.5.2000. Petitioners have purchased the said house No. 119/160 Ka [old No. 36] through a registered sale deed dated 30.7.2001 from opposite party Nos. 4 and 5.

4. It is stated by the learned Counsel for the petitioners that when the petitioners came to know about the pendency of Regular Suit No. 259 of 1992 filed by the opposite party No. 3 Shakeel Ahmad Khan, they moved an application for impleadment to which objections were filed by the opposite party No. 3 plaintiff and the learned IInd Additional Civil Judge, Senior Division after hearing the parties allowed the application for impleadment vide orders dated 14.3.2005. The order dated 14.3.2005 passed by the Additional Civil Judge was assailed by the opposite party No. 3 in civil revision before the Additional District Judge; who by a judgment and order dated 19.12.2005 allowed the revision and set aside the order dated 14.3.2005.

5. Hence, the instant writ petition inter alia on the grounds that the learned Additional District Judge committed an error in rejecting the application of the petitioners for impleadment which was rightly allowed by the trial court overlooking the fact that non-impleadment would deprive the petitioners from presenting their case and any order passed in the suit would have adverse effect on the petitioners. It is further submitted that the revisional court has failed to appreciate that the petitioners are bona fide purchasers for valuable consideration of the house in question while the opposite party No. 3 although entered in the portion of the house as a tenant is now claiming to have perfected his rights by adverse possession. Thus, the petitioners being the bona fide purchaser of the house in question are not only the proper parties but necessary parties for proper adjudication of the dispute.

4. Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, it has been argued by the learned Counsel for the petitioners that under Rule 10, Order XXII of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against persons upon whom such interest has devolved and this entitles the person, who has acquired an interest in the subject-matter of the litigation by an assignment or creating or devolution of interest pendente-lite or suitor or any other person

interested, to apply to Court for leave to continue the suit. He further argued that though the initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge but the person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party.

7. It has also been urged by Mr. Javed Murtaza that under Order XXII, Rule 10 of the Code no detailed enquiry at the stage of leave is contemplated. The Court is to be satisfied for exercising its discretion in granting them leave for continuing the suit by or against a person on whom the interest has devolved. In *Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr.* 2005 (2) ARC 174 : 2005 (2) AWC 1348 (SC), the Hon'ble Apex Court permitted the impleadment holding that the appellants who are transferees pendente lite should be made as parties to the pending civil appeals, therefore, the court below, in the present case, has committed an error in rejecting the application for impleadment made by the petitioners as they are the necessary and proper parties. In *Amit Kumar Shaw's* case, the Apex Court in paragraph 10 has held as under:

The power of 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 include necessarily an enforceable legal right.

8. During the pendency of the present writ petition, the Regular Suit No. 259 of 1992 preferred by opposite party No. 3 was decreed by the Judgment and order dated 12.2.2007 as such the petitioners moved an application for amendment in the writ petition and has prayed for quashing of the impugned judgment and decree feted 12.2.2007.

9. Refuting the allegations of the petitioners, learned Counsel for opposite party No. 3 submitted that Mr. J.J. Rice-opposite party No. 6 was not the legal heir of late A.H. Jahans, who, undisputedly, was the owner of the property in question. Opposite party No. 6 in collusion with Mr. S.B. Caleb obtained the decree dated 5.1.1991 which was under challenge in Regular Suit No. 259 of 1992. Smt. Sharmila Raees, who had purchased the house in question from J.J. Rice in the year 1990 never moved any application for impleadment. Further, Mr. J.J. Rice, though was not the bona fide owner of the property in question, alienated the same with mala fide intention. Thus, the petitioners cannot be called or treated bona fide purchasers of the house in question.

10. Mr. Naseerullah appearing for opposite party No. 3 Shakeel Ahmad Khan further submitted that Mr. J.J. Rice is not the legal heir of late A.H. Jahans, who, admittedly, was the owner of the property in question. After the death of Mr. A.H. Jahans, there were several legal heirs, and they are, admittedly, alive. Mr. J.J. Rice obtained a collusive decree dated 5.1.1991 as Mr. S.B. Calab, absented himself after filing of written statement and it is the said collusive decree which has been assailed by the opposite party No. 3 in Regular Suit No. 259 of 1992.

Elaborating further, he submitted that Mr. J.J. Rice had been contesting the Regular Suit No. 259 of 1992 and had also filed written statement and during the pendency of the said suit, he sold the property in question to Smt. Sharmila Raees, who thereafter sold the same to Smt. Shafaq Bano and Yusuf Pasha. Thereafter the petitioners purchased the said property. He also submitted that Smt. Sharmila Raees, who purchased the house in question from J.J. Rice did not apply for impleadment in the said suit. Only the petitioners had applied for impleadment. As J.J. Rice was not the owner of the property, he had no right to transfer the property, therefore, the subsequent purchasers cannot be termed as bona fide purchasers.

11. According to him, the revisional court has considered each and every aspect of the case and has rightly set aside the order passed by the trial court. The order of revisional court cannot be said to be unjustified or the findings to be erroneous.

12. A perusal of the order passed by the revisional court shows that the revisional court has held in unequivocal words that the result of the persons/purchasers of the property during the pendency of the suit will be that of original parties to the suit. In order to allow the purchasers to be impleaded in the suit, it is to be seen that what prejudice would be caused to him by non-impleadment in the proceedings. In the instant case, Mr. J.J. Rice original defendant in the suit, sold the property in question to Smt. Sharmila Raees, who thereafter sold the same to Smt. Shafaqat Bano and Yusuf Pasha from whom the petitioners purchased the said property. Neither Smt. Sharmila Raees, who purchased the house in question from J.J. Rice nor the subsequent purchasers, moved any application for impleadment and for the first time the petitioners have made an application for impleadment. A finding of fact has been recorded by the revisional court that erstwhile purchasers, namely, Smt. Sharmila Raees and Smt. Shafaqat Bano/Yusuf Pasha have not made any efforts for impleadment in the pending suit. The revisional court while allowing the revision of opposite party No. 3 has also recorded a finding that the trial court has failed to appreciate the fact that Mr. J.J. Rice has obtained the decree by concealing the facts insofar as he has not disclosed the legal heirs of Mr. A.H. Jahans, who was the owner of the property in question and in the present proceeding Mr. J.J. Rice had admitted the fact that there were legal heirs of late A.H. Jahans, who are still alive and are residing in London.

13. It may be mentioned that in order to allow an application for impleadment, it is the duty of the Court to see as to whether the purchaser of the property is a bona fide legal purchaser and the owner is legally entitled to transfer the property and only when the Court comes to conclusion that the property has been purchased from the rightful owner in accordance with established law, then only such an application can be allowed. However, in the instant case, the trial court has not recorded such a finding and it is the revisional court, which has recorded a finding that Mr. J.J. Rice is claiming ownership on the basis of decree

dated 5.1.1991 which is under challenge in Regular Suit No. 259 of 1992.

14. It may be mentioned that provisions of Section 52 of the Transfer of Property Act safeguards the interest of subsequent purchasers in certain conditions. In *Sanjay Verma v. Manik Roy and Ors.* 2007 (25) LCD 313 : 2007 (1) AWC 462 (SC), the Supreme Court after considering the law laid down in *Dhurandar Prasad Singh's* case (supra) held in paragraph 12 as under:

The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as, much as he was a party to the suit. The principle of lis by the pendens embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. This section only postulates a condition that the alienation will in no manner affect the right of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

15. From the perusal of record and order-sheet, it comes out that this writ petition was filed in March, 2006 and no ad-interim order was passed and as such the proceedings continued and ultimately, the suit filed by the opposite party No. 3 was decreed by the judgment and order dated 12.2.2007. Therefore, the petitioners made an application for amendment in the writ petition assailing the said judgment. The opposite party No. 3 filed objections to the said application in which it has been mentioned that the petitioners have not suffered in any manner any injury or loss and the petitioners have no locus to assail the said judgment when their application for impleadment has already been rejected by the revisional court.

16. It is relevant to add that the decisions cited by the petitioners' counsel are not applicable in the present case as in the aforesaid cases either the suit was going on or the appeal was pending whereas in the instant case during the pendency of the writ petition the suit preferred by the opposite party No. 3 has been decreed by the Judgment and order dated 12.2.2007 and thereafter no proceedings are pending as nothing has been brought to the notice of the Court by the parties counsel.

17. For the reasons aforesaid, I find no infirmity or illegality in the judgment and order dated 19.12.2005, passed by the revisional court. The writ petition fails and is hereby dismissed.