
(2008) 02 AHC CK 0264
In the Allahabad High Court

Shahzad Ahmad Khan and Others

APPELLANT

Vs

Mohd. Ahmad and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Transfer of Property Act, 1882 — Section 52
Civil Procedure Code, 1908 (CPC) — Section 151
Transfer of Property Act, 1882 — Section 52
Civil Procedure Code, 1908 (CPC) — Section 151
Transfer of Property Act, 1882 — Section 52

Citation : (2008) 2 AWC 1258 : (2008) 104 RD 443

Hon'ble Judges : V.M. Sahai, J; R.N. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and R.N. Misra, JJ.—This appeal has been preferred by the third party-appellants against the order dated 17.11.2007, passed by Addl. District Judge, Court No. 6, Saharanpur in Original Suit No. 89 of 1999, by which the application 236C2 moved by them under Order I, Rules 3, 10 (2), Order XXII, Rule 10 and Section 151, C.P.C. for impleadment as defendants has been rejected.

2. We have heard Shri Syed Wajid Ali, learned Counsel for the appellants and Shri Rakesh Kumar for the respondents and perused the order passed by the learned court below.

3. It appears from the record that the "aforesaid suit has been filed by the plaintiff-respondents No. 1 and 2 against the defendant-respondent No. 3, for specific performance of contract to sale of the landed property agreement for which was allegedly entered into between them on 13.2.1991, a registered document. When the defendant-respondent No. 3, did not execute the sale deed in pursuance to the contract, the plaintiff-respondents No. 1 and 2 filed the suit. In the meantime some more developments took place. During the pendency of the suit on 22nd and 26th May, 2000, the defendant-respondent No. 3 allegedly

sold the property in suit to the present third party-appellants and on the basis of that sale-deed (copy Annexure-1), they moved application for impleadment, which was rejected by the learned trial court. The present appeal has been preferred against that order.

4. The main and only question involved in this appeal is whether the third party-appellants are proper and necessary party to the aforesaid suit, under Order XXII, Rule 10, C.P.C.

5. The learned Counsel for the appellants has argued that since the owner of the property (defendant-respondent No. 3), transferred the disputed property to them in May, 2000, therefore, their interest is involved in the property and for the final adjudication of the case, it is necessary that they may be allowed to be impleaded as party and put their case before the Court. As against this the learned Counsel for the plaintiff-respondents No. 1 and 2 have alleged that the appellants are neither proper nor necessary party to the suit because their case is hit by Section 52 of the Transfer of Property Act.

6. This is admitted case that the suit was filed in the year 1993 and on the basis of registered agreement dated 13.2.1991 to sell the property in dispute, the relief for specific performance of contract has been sought for in the suit. The defendant-respondent No. 3 had been contesting the suit. In the meantime, in May, 2000 the property was allegedly transferred by the respondent No. 3 to the present appellants, meaning thereby, the transfer in favour of the appellants was made during the pendency of the suit. As regards the application of the provisions of Order 1, Rule 3 are concerned they are not applicable in the present case. The provisions of Order XXII, Rule 10, C.P.C. have attracted our attention which runs as under:

Procedure in case of assignment before final order in suit.-(i) In other cases of an 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.

(ii) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of Sub-rule (1).

7. The appellants moved application for impleadment on the basis of the aforesaid provision but the learned trial court rejected their prayer being hit by Section 52 of the Transfer of Property Act, which runs as under:

Section 52. Transfer of property pending suit relating thereto.-During the pendency in any Court having authority (within the limits of India excluding the State of Jammu and Kashmir) or established beyond such limits) by (the Central Government) of (any) suit or proceedings 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

proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

8. The aforesaid provision is very clear, in view of which no valid transfer can be made during the pendency of the suit without authority of the Court. Admittedly, in the present case no such permission was sought by the defendant-respondent No. 3 to transfer the property in suit or by the appellants to purchase it. The copy of the sale deed, Annexure-1 to the memo of appeal shows that the parties involved in the transfer had full knowledge of the fact that a suit for specific performance of contract between the plaintiff-respondents and defendant-respondent was pending. There was specific mention of this fact in the sale deed itself, therefore, the appellants cannot say that they had no knowledge of the suit pending between the respondent Nos. 1 and 2 on one side and respondent No. 3 on the other side. Even having knowledge of the pendency of the suit, no permission for transfer was sought u/s 52 of the Transfer of Property Act.

9. The learned Counsel for the appellants has cited the case of *Kasturi Vs. Iyyamperumal and Others*, and has argued that the appellants were proper and necessary party to the suit we see no force in this connection. In the aforesaid case the Apex Court held that in a suit for specific performance of a contract for sale, third party stranger to the agreement could not claim independent title and possession over the disputed property. Another case cited by the learned Counsel for the appellants is *Dhurandhar Prasad Singh Vs. Jai Prakash University and Others*, in which it has been held that as a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him. The learned Counsel for the appellants has also cited the case of *Jaskirat Datwani v. Vidyavati and Ors.* 2002 ACJ 1496, in which the Hon'ble Apex Court has held that a transferee during the pendency of the suit would be bound by the decree as he has knowledge of the suit. In the present case before us it is clear from the copy of the sale deed itself that the appellants had full knowledge of the pendency of the suit for specific performance of contract against their vendor and even then they purchased the property without obtaining permission of the Court as required u/s 52 of the Transfer of Property Act and not only this they slept over the matter for about 7 years without any cause. They applied for impleadment under Order XXII, Rule 10, C.P.C. after about 7 years when the hearing of the case was almost concluded and the case was fixed for final argument.

10. The learned Counsel for the respondents No. 1 and 2 has cited *Anil Kumar Singh v. Shivnath Mishra* AIR 1996 (27)203, in which it has been held that in a suit for specific performance of contract the third party has no right to be impleaded as defendant on the basis of assignment, creation or devolution of interest under Order XXII, Rule 10, C.P.C.

11. The latest judgment on this point is *Sanjay Verma v. Manik Roy and Ors.* AIR 2007 (49) 5 : 2007 (1) AWC 462 (SC), in which the Apex Court has taken the

same view. In the said case the appellant filed the suit for specific performance of contract against one Rajeshwari Devi, the respondent No. 3. During the pendency of the suit Smt. Vinaya Devi, the defendant-respondent No. 4 transferred a portion of a suit land in favour of one Mihir Kumar Chakraborty. Another defendant Sanjay Prasad also transferred a portion of suit land in favour of Shyam Kumar Dutta. Both of them applied for impleadment under Order I, Rule 10, C.P.C. Their application was rejected by the trial court but in the writ petition before the High Court, the order of the learned trial court was set aside. The SLP was filed against that order. The Apex Court allowed the SLP and set aside the order passed by the High Court. A reference of the case of the Dhurandhar Prasad Singh (supra), was also given in the said case. It was clearly held that the transfer without the permission of the Court was hit by Section 52 of the Transfer of Property Act. It was also observed that the principle of "lis pendens" embodied in Section 52 of the Transfer of Property 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 property constituting that the alienation will, in no manner, affect the rights 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. On the basis of principle of "precedence" this judgment, being latest one, will prevail over the earlier judgments cited by the learned Counsel for the appellants.

12. The learned trial court has pointed out a very material thing in its impugned order. The defendant-respondent No. 3 has already filed a suit against the present appellants for the cancellation of the sale deed on various grounds which is numbered as Original Suit No. 389 of 2003. Therefore, in the present suit if the appellants are made party on the basis of the sale deed in their favour, there will arise a dispute regarding the genuineness of the sale deed itself between the defendants inter se, which cannot be decided in the said suit. Thus, it is clear that interest of the third party is contrary to their alleged vendor.

13. In view of our above discussions, we come to the conclusion that the learned trial court has rightly observed that the third party appellants are not proper and necessary party to the suit and their prayer is hit by Section 52 of the Transfer of Property Act. Moreover, the appellants lack in bona fides in moving the Court after 7 years of the sale deed in which it was specifically disclosed that the suit was pending. The suit is ready for final argument. Rule 3A of Order I, C.P.C., lays down the provision for separate trial where the joinder of the defendants may delay the trial. As such, this appeal is devoid of merits and it is dismissed; summarily under Order XLI, Rule 11, C.P.C., with costs to the contesting respondents.