

(2013) 02 DEL CK 0096

In the Delhi High Court

Case No : OA No. 19 of 2011 in CS (OS) 1098 of 2008

Shri Pratap Singh

APPELLANT

Vs

Mr. Rahul Gupta and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 199 DLT 78 : (2013) 135 DRJ 330

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : A.P.S. Ahluwalia with Mr. S.S. Ahluwalia, for the Appellant; Jasmeet Singh with Ms. Vatsala Singh, R-1 and Mr. M.K. Singh, for DDA, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By this order I propose to dispose of the appeal filed by the appellant under Rule 4 of Chapter II of Delhi High Court (Original Side) Rules, 1967 against the impugned order dated 14th December, 2010 whereby the learned Joint Registrar has dismissed the application moved by the appellant under Order 1 Rule 10 (2) CPC. A brief narration of the facts is necessary in order to deal with the present appeal: Subject matter of the dispute is a plot No. 39 admeasuring 460 sq. yds. Motia Khan Dump Scheme, Rani Jhansi Road, New Delhi. The said plot was originally allotted by the then Delhi Improvement Trust in favour of late Shri Brij Lal Mehra and late Shri Gurdial Singh some time in the year 1956. Shri Brij Lal Mehra had expired in the year 1960 leaving behind his two sons and one daughter, namely Mr. Om Prakash Mehra, Mr. Roshan Lal Mehra and Smt. Kanchan Suraj Prakash Khanna as his legal heirs, however, both Mr. Om Prakash Mehra and Mr. Roshan Lal Mehra had died in the year 1999 and, therefore, from the branch of Shri Brij Lal Mehra, Smt. Kanchan Suraj Prakash Khanna became entitled to half undivided share in the said lease hold plot. The other co-owner of the plot namely Mr. Gurdial Singh was a bachelor and he also died on 20th October, 1974. He had left behind his brother Shri Rajinder Singh,

class II legal heir, therefore, after the demise of his brother, Shri Rajinder Singh had approached the Delhi Development Authority to seek substitution of his name in place of his brother but DDA directed him to first obtain succession or letter of administration from the competent Court of law. Accordingly Mr. Rajinder Singh had applied for the same and had successfully obtained the said letter of administration from the District Judge Delhi vide orders dated 19.12.1979 in probate case No. 193/78. Based on the said letter of administration the mutation of half undivided share was carried out by the DDA in the name of Shri Rajinder Singh. It is also an undisputed fact that the said plot of land was encroached upon by certain encroachers, therefore the possession of the same could never be delivered to the said co-lessees or their successors in interest. So far the branch of late Shri Brij Lal Mehra is concerned there is no dispute between the parties, that Smt. Kanchan Suraj Prakash Khanna is the rightful claimant of his half undivided share in the said plot, but the disputes have arisen with regard to the remaining half share in the said plot.

2. The plaintiff in the present suit being CS (OS) 1098/2008, Mr. Rahul Gupta, has filed the suit for declaration, possession and mandatory injunction and he has impleaded Mrs. Kanchan Suraj Prakash Khanna as defendant No. 1 and the DDA as defendant No. 2. A decree of declaration has been sought by Mr. Rahul Gupta, plaintiff in order to get himself declared as the owner of the undivided equal half share of the said plot in question. A decree of possession has been claimed by the plaintiff so as to direct defendant No. 2, DDA to hand over the possession of the subject plot free from all encroachments to the plaintiff and a decree of mandatory injunction to direct DDA, defendant No. 2 herein to execute the perpetual lease deed in his favour and defendant No. 1.

3. The plaintiff Mr. Rahul Gupta has claimed his right on the premise that late Shri Rajinder Singh had sold his half undivided share in the said plot in favour of Smt. Darshan Kaur vide agreement to sell and Power of Attorney dated 7th August, 1979, which was duly registered in the office of Sub-Registrar, Delhi. It is also the case of the plaintiff that Smt. Darshan Kaur had further sold the said undivided half share in favour of the plaintiff vide registered agreement to sell dated 13.3.2007 for a total sale consideration amount of Rs. 10 lakhs. Along with the said agreement to sell Smt. Darshan Kaur had also executed a General Power of Attorney and a Will dated 13.3.2007. The claim of the plaintiff in the suit is thus based on said agreement to sell dated 13.3.2007 and other transfer documents executed by Smt. Darshan Kaur.

4. The appellant/applicant Mr. Pratap Singh moved an application under Order 1 Rule 10(2) CPC to seek his impleadment. As per the facts disclosed by the applicant Pratap Singh, he claims himself to be the son of late Shri Rajinder Singh, one of the legal heirs in the subject property. He has stated that late Mr. Rajinder Singh had left behind his widow Smt. Sumitra Devi, two sons namely Hardas Singh and Pratap Singh and two daughters namely Smt. Pramajit Kaur and Smt. Narinder Bhatia. It is also the case of the applicant/appellant that Smt.

Sumitra Devi, widow of late Shri Rajinder Singh also passed away on 5th June, 1995 and subsequently Smt. Pramjit Kaur, daughter of Shri Rajinder Singh also died on 5th January, 2000. It is also the case of the appellant/applicant that vide his application dated 25th June, 2001 he made a request to the DDA for mutation of the said plot in his favour as well as in favour of the legal heir of late Shri Brij Lal Mehra. It is also the case of the appellant that he along with Smt. Kanchan Suraj Prakash Khanna met the DDA officials to request for the allotment of the plot in their favour and also for getting the said plot vacated from the encroachers. It is also the case of the applicant/appellant that the other legal heirs of late Shri Rajinder Singh namely Shri Narinder Bhatia and Shri Hardas Singh had executed a relinquishment deed in his favour whereby they had relinquished their rights and share in the said plot in favour of the applicant/appellant on 17.05.2003. The appellant has thus claimed his right over undivided half share in the said plot being the class I legal heir of late Shri Rajinder Singh.

5. Another fact which is not in dispute between the parties is that Mrs. Kanchan Suraj Prakash Khanna, who is the respondent No. 2 in the present appeal and defendant No. 1 in the main suit had filed a Writ Petition (C) No. 9169/2007 against the DDA in the Delhi High Court seeking appropriate direction to the DDA to hand over possession of the said plot. In the said writ petition neither the present applicant/appellant was impleaded by her nor even Mr. Rahul Gupta, respondent No. 1/plaintiff. It is also the case of the appellant that as soon as he got to know about the pendency of the writ petition, he filed an application under Order 1 Rule 10 CPC before the writ Court to seek his impleadment as a necessary party.

6. Similarly respondent No. 1/plaintiff Mr. Rahul Gupta also sought his impleadment in the said writ petition based on his alleged right of half undivided share in the said plot. The impleadment of the appellant and that of Rahul Gupta was allowed by the writ Court. Subsequently vide order dated 3rd February, 2010 the said writ petition filed by Ms. Kanchan Suraj Prakash Khanna was also disposed of by the writ Court with the direction to the DDA to dispose of the claims of all the three claimants i.e. the appellant, Mr. Rahul Gupta, plaintiff/respondent No. 1 and Mrs. Kanchan Suraj Prakash Khanna, respondent No. 2/defendant No. 1 after giving proper hearing to all of them and then pass a reasoned order in accordance with law within a period not later than three months from the date of the receipt of the said order.

7. It is also a matter of record that the present suit was filed by Mr. Rahul Gupta some time in May, 2008 when the said writ petition preferred by Mrs. Kanchan Suraj Prakash Khanna was already pending before the writ Court. It is also a matter of record that application under Order 1 Rule 10 CPC moved by the appellant in the said writ petition was decided by the writ Court vide orders dated 17th August, 2009 while an application moved by him in the present suit was decided by the learned Joint Registrar on 14th December, 2010.

8. Extensive arguments were addressed by the counsels representing both the

parties. Mr. A.P.S. Ahluwalia, Sr. Advocate, who appeared for the applicant, strongly contended that the learned Joint Registrar has ignored the order dated 17th August, 2009 passed by the writ Court whereby similar application of the appellant was allowed and, therefore, the learned Joint Registrar has not only committed apparent illegality but a jurisdictional error by over reaching the said order passed by the Hon''ble High Court. Counsel further submitted that the learned Joint Registrar has given his finding on merits of the case instead of appreciating the basic principles envisaged under Order 1 Rule 10 CPC for impleadment of any party to the suit. Counsel also argued that the presence of the appellant is not only proper but necessary for proper and effectual adjudication of the disputes between the parties. Counsel also argued that the plea of limitation will not be available to respondent No. 1/plaintiff to extinguish the defence as the law of limitation only bars remedy for bringing any suit. Counsel for the appellant further raised a contention that failure of the appellant to challenge the agreement to sell dated 7th August, 1979 based on which the respondent No. 1/plaintiff has claimed his right, within the period of limitation, would not bar the remedy of the appellant to defend his right as a defendant. In support of his arguments counsel for the appellant placed reliance on the following judgments:-

1. Gurmauj Saran Baluja V. Mrs. Joyee C. Salim & others, AIR 1990 DELHI 13
2. Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, .
3. Kasturi Vs. Iyyamperumal and Others, .
4. Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, .
5. Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, .

9. On the other hand Mr. Jasmeet Singh, counsel for respondent No. 1/plaintiff, has fully buttressed the detailed reasons given by the learned Joint Registrar in dismissing the application of the appellant under Order 1 Rule 10 CPC. Counsel also submitted that the plaintiff being the dominus litismay choose the parties against whom he seeks relief and he cannot compelled to sue any person against whom no relief is either sought or claimed. Counsel also argued that the appellant has so far not challenged the legality and validity of the agreement to sell dated 7th August, 1979 executed by late Shri Rajinder Singh in favor of Smt. Darshan Kaur and the agreement to sell dated 13.3.2007, which was executed by Smt. Darshan Kaur in favour of respondent No. 1/plaintiff. Counsel also argued that the appellant is fully conscious of the fact that his remedy to challenge the title of the plaintiff has become time barred and, therefore, by seeking his impleadment in the present suit he intends to set up his title over undivided half share in the said lease hold plot. Counsel also submitted that if the appellant is impleaded in the present suit then it will complicate the issues

involved in the present suit and in fact the present suit will get converted into a title suit deciding the title of the parties in the face of clear title of the plaintiff/respondent No. 1 over undivided half share in the plot in question. Based on these submissions counsel submitted that the presence of the appellant is neither necessary nor proper for the effectual adjudication of the disputes in terms of the reliefs claimed by the plaintiff/respondent No. 1 in the present suit.

10. I have heard learned counsel for the parties at considerable length and given my anxious consideration to the arguments advanced by them.

11. For better appreciation of the controversy let me first reproduce Order 1 Rule 10 of the CPC which reads as under:-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.-

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, 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, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended-

Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

12. Even by a cursory look at the said provision, it can be seen that a wide discretion, has been conferred on the Court in order to decide whether to strike off any party from the suit, who has been indecorously joined either as a plaintiff or defendant or to include the name of any person, whose presence is found to be necessary by the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. This power vest in the Court can be

exercised at any stage of the proceedings and the same can be exercised even suo motu without there being any application of either of the parties.

13. Once I say discretion, certainly it would mean the discretion to be exercised by the Court not quixotically but based on sound judicial principles of law after taking into consideration the facts of the case. The effectual and complete adjudication and settlement of all the questions involved in the suit is the primary test to decide as to whether the impleadment of any party to a suit is required or not.

14. Therefore, It is pellucid that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate the matter, in favour of or against whom the decree is to be made. Centered on these settled legal principles, catena of judgments have been passed by the Hon''ble Apex Court, where the aforesaid factors and parameters amongst others have been considered by the Court while determining such a question.

15. Throwing some light on the principle of "Dominus Litis", It is no more res integra, that in a case where the Court deems it necessary and proper, to implead any party depending upon the circumstances of the case, it is at the discretion of the Court, to direct impleadment of such a party whose presence is found necessary and proper in effective and proper adjudication of the disputes against the wishes of the plaintiff, the "dominus litis". Rule 10 (2) CPC is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. In exercising its judicial discretion under the said rule, the court will of course act according to reason and fair play and not according to whims and caprice. It is a well settled proposition of law that the Court has the discretion either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he so wishes.

16. In Mumbai International Airport (supra), the Hon''ble Apex Court has very widely discussed the scope and ambit of Order 1 Rule 10 (2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial

discretion under Order 1 Rule 10 (2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. The relevant paragraph of the judgment is quoted below:

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of CPC ("Code" for short), which provides for impleadment of proper or necessary parties.

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

17. Dealing with the principle of "Dominus Litis", the Allahabad High Court in the case of Management, Ratan Muni Jain Inter College and another v. III Additional Civil Judge, Agra: AIR 1995 All 7 has held as under:

The theory of dominus litis should not be over stretched in the matter of impleading of parties, because it is the duty of the Court to ensure that if for deciding the real matter in dispute, a person is necessary party, the Court can order such person to be impleaded. Merely because the Plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The provisions of Order 1 Rule 10 (2) CPC are very wide and the powers of the Court are equally extensive. Even without an application to be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, who ought to have been joined whether as Plaintiff or Defendant 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, be added.

18. There is no iota of doubt that the appellant before this Court, is a legal heir of late Shri Rajinder Singh, who was brother of late Shri Gurdial Singh, co-lessee of the plot in question. The plaintiff has claimed that he had also been corresponding with the DDA to seek execution of the perpetual lease deed in his favour in respect of the undivided half share and for getting the plot of land, free from all encumbrances. He has also claimed that all the other legal heirs left by late Shri Rajinder Singh had executed relinquishment deed in respect of the same very plot in his favour. He has also claimed that late Shri Rajinder Singh could not have executed agreement to sell in favour of Smt. Darshana Kaur before the grant of letter of administration by the learned District Judge in his favour. The plaintiff/respondent No. 1, on the other hand, has claimed that late Shri Rajinder Singh had sold undivided half share through registered agreement to sell and registered GPA in favour of Smt. Darshana Kaur and later she had sold the same vide registered agreement to sell and other transfer documents in favour of the plaintiff.

19. In the teeth of these hostile claims set up by both the parties, can it be said that there would be proper, effectual and complete adjudication of the disputes in the matter without the impleadment of the appellant in the present case. In my view certainly the answer is emphatic-"No". With the presence of the appellant, the respondent No. 1 would not be able to clear his right and title over the said plot of land in question and it is the appellant alone who has challenged the title of the respondent No. 1/plaintiff although there is no such serious challenge from the other contestant/respondent No. 2/defendant No. 1. I also find myself in agreement with the submission of the counsel for the appellant that law of limitation will not come in the way of the appellant to raise any defence even though his remedy to file a suit based on such a defence may become time barred. The relevant paragraphs of the judgment cited by the counsel for the appellant in the case of Shrimant Shamrao Suryavanshi (supra) are reproduced as under:-

15. The Special Committee's report which is reflected in the aims and objects of amending Act 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of Special Committee's report and aims, object contained in amending Act 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession u/s 53-A even if the period of limitation to bring a suit for specific performance has expired.

19. In M.K. Venkatachari and Others Vs. L.A.R. Arunachalam Pillai and Others, , it was held, thus:

that defence to limitation is a creature of a positive law and, therefore, cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic.

20. It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.

20. Having taken the said view, I am astounded to find that the learned Joint Registrar totally ignored the order dated 17th August, 2009 passed by the writ Court, whereby the writ Court had allowed the impleadment application of the appellant. For better appreciation the operating paragraphs of the aforesaid order dated 17.08.2009 are reproduced as under:

As to who is entitled for the share of Sh. Gurdial Singh is not to be adjudicated in the present proceedings in the facts and circumstances. However in the facts and circumstances, the applicant is a necessary party especially since another alleged transferee has already been impleaded as a party to the present petition. In order to ascertain whether a person is a necessary party or not what is to be seen is whether in the absence of such a person, there is a possibility of conflicting decrees being passed by the Court. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled. The question to be settled must be a question in the action which cannot be effectually and completely settled unless he is a party. A line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.

All persons against whom the right to relief is alleged to exist may be joined as defendants. Order 1 Rule 10 of the CPC specifically provides that it is open to the Court to add at any stage of the legal proceedings, a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The Court may at any stage of the suit direct addition of parties. A party can be joined as respondent even though the petitioner does not think that he has any cause of action against him. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the petitioner to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be

made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. Consequently, the applicant is impleaded as respondent No. 4. Amended memo of parties be filed.

W.P. (C) No. 9169/2007

Amended memo of parties be filed within two weeks. The learned counsel for the respondent No. 4 seeks time to file the reply. Reply be files within four weeks. Rejoinder, if any, before the next date of hearing.

21. Once the writ Court felt that the impleadment of the appellant is necessary for proper and effectual dispute between the parties, it is beyond comprehension of this Court as to how the learned Joint Registrar could take any contrary view totally snubbing the said order passed by the writ Court. Another important factor which cannot be lost sight of is the fact that the said writ petition was disposed of by the writ Court vide order dated 3rd February, 2010 and respondent No. 1/plaintiff had given his no objection to enable the DDA to decide the mutation application of the petitioner therein by a reasoned order. The germane portion of the said judgment dated 3rd February, 2010 is reproduced as under:-

...4. Mr. Jasmeet Singh, learned counsel for respondent No. 2 submits that respondent No. 2 has no objection, if half of this property is mutated in favour of the petitioner. Learned counsel for respondent No. 3, however, opposes this petition on the ground that respondent No. 3 is the legal heir of the joint allottee of the plot, in question.

5. Be that as it may, learned counsel for the respondent/DDA submits that DDA will grant one hearing to all the parties and thereafter decide the mutation application of the petitioner by a reasoned order. Counsel for the petitioner as well as respondents No. 2 and 3 have no objection.

6. Accordingly, as agreed, the petitioner as well as respondents No. 2 and 3 will appear before the concerned Director along with all supporting documents on 26.02.2010 at 2.30 p.m. The concerned Director after hearing the petitioner as well as respondents No. 2 and 3 pass a reasoned Order in accordance with law within a period not later than three months from the receipt of this order.

7. Petition stands disposed of in view of above. CM No. 17260/2007 (STAY)

8. As agreed, till the hearing is concluded by the concerned Director, all the parties shall maintain status quo with respect to the plot, in question.

9. Application stands disposed of.

22. In the light of the above discussion the impugned order passed by the Ld.

Joint Registrar is hereby set aside and the present appeal filed by the plaintiff is accordingly allowed.

23. Let amended memo of parties be filed by the plaintiff, impleading the present appellant as defendant No. 3 in the suit within a period of two weeks from the date of this order. It is ordered accordingly. List the matter before Joint Registrar on 22.02.2013.