

(2010) 08 DEL CK 0073

In the Delhi High Court

Case No : FAO (OS) No. 217 of 2008 and CM No. 6855 of 2008, FAO (OS) No. 653 of 2009 and CM No. 18685 of 2009 and FAO (OS) No. 134 of 2010 and CM No. 3511 of 2010

S.N. Arora

APPELLANT

Vs

Brokers and Brokers Pvt. Ltd.
 Bankey Bihari
Expotrades (P) Ltd. Vs Raj Khurana
 Shri Bhagwan Vs
Shri Mahipal Singh

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 97
Specific Relief Act, 1963 — Section 19
Transfer of Property Act, 1882 — Section 40, 52
Trusts Act, 1882 — Section 91

Citation : AIR 2011 Delhi 89 : (2010) 118 DRJ 631

Hon'ble Judges : Vikramajit Sen, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Kuldeep Kumar, in FAOOS No. 217/2008, CM No. 6855/2008, J.P. Sengh, Vikram Nandarajog, Sumeet Batra, in FAOOS No. 653/2009, CM No. 18685/2009 and Dinesh K. Gupta, in FAOOS No. 134/2010, CM No. 3511/2010, for the Appellant; Jagjit Singh, for Respondent No. 1, Parveen Rawal, in FAO(OS) No. 217/2008, CM No. 6855/2008, Chetan Sharma Sushil K. Pandey, for Respondent No. 1, Raman Kapur and Francesca Kapur for Respondents Nos. 2-4 in FAO(OS) No. 653/2009, CM No. 18685/2009, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—These Appeals require us to indicate the circumstances and delineate the parameters in which a third party can be permitted to be impleaded in a suit for Specific Performance of a contract for the sale of immovable property. The analysis would perforce have to consider whether it is justifiable to dilute the principle of the plaintiff being dominus litis to the extent that the plaintiff can successfully resist the impleadment of an assignee/transferee of the contract subsisting between him and the plaintiff and a second party.

2. We must immediately consider two Judgments authored by Dr. A.R. Lakshmanan, J. on behalf of Two Judge Benches, namely (i) Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, and (ii) Dhanalakshmi and Others Vs. P. Mohan and Others, . In the first case, their Lordships analyzed Order XXII Rule 10, Order I Rule 10, Section 146 of the Civil Procedure Code, 1908 ("CPC" for short) as well as Section 52 of the Transfer of Property Act, 1882 ("TP Act" for short). However, there was no representation for the Respondent in this case, namely, Amit Kumar, hence the plethora of precedents on this vital limb of the law were neither cited nor considered. In the second case Section 52 of the TP Act was the cynosure; and moreover this decision also does not discuss any of the multitude of decisions already rendered on this legal nodus. We do not have the benefit of the dialectic which persuaded the Court to conclude that - "Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings". There are several decisions of the Supreme Court on this vital aspect of law which we have tabulated thus:

Sl. No. Citation.

1. Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another,
2. Khem Chand Shankar Choudhari v. Vishnu Hari Patil (1983) 1 SCC 188
3. Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru,
4. Surjit and others Vs. Harbans Singh and others etc. etc.,
5. Sarvinder Singh Vs. Dalip Singh and Others,
6. Dhurandhar Prasad Singh Vs. Jai Prakash University and Others,
7. Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another,
8. Raj Kumar Vs. Sardari Lal and Others,
9. Sanjay Verma Vs. Manik Roy and Others,
10. Sunil Gupta Vs. Kiran Girhotra and Others,

3. A Four-Judge Bench in Saila Bala had decided in favour of impleading a subsequent purchaser on the ground that being "a purchaser pendente lite, she will be bound by the proceedings taken by the first respondent in execution of a decree, and justice requires that she should be given an opportunity to protect her rights". These observations were obviously in view of the fact that the execution proceedings had been filed after eighteen years and were not being resisted. This decision has been considered and explained in Dhurender Prasad Singh in these words:

8. The effect of failure to seek leave or bring on record the person upon whom the interest has devolved during the pendency of the suit was the subject-matter

of consideration before this Court in various decisions. In the case of Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, T.L. Venkatarama Aiyar, J., speaking for himself and on behalf of S.R. Das, C.J. and A.K. Sarkar and Vivian Bose, JJ. laid down the law that if a suit is pending when the transfer in favour of a party was made, that would not affect the result when no application had been made to be brought on the record in the original court during the pendency of the suit.

4. It is also of importance to mention that the doctrine of lis pendens has been applied even to those cases where the transferee has acquired rights over the suit property not through any of the parties thereto, but through a Court auction. This has been recognized in a Three-Judge Bench decision in Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, . The same principle has been affirmed by another Three-Judge Bench decision in Kedar Nath Lal and Another Vs. Ganesh Ram and Others, where their Lordships reiterated - "it is true that Section 52, strictly speaking, does not apply to involuntary alienations such as Court sales but it is well established that the principle of lis pendens applies to such alienations". In the backdrop of this exposition of the law, it appears difficult for us to appreciate or locate any consideration, equitable or otherwise, which would tilt the scales in favour of a party who has acquired rights to immovable property which is the subject matter of litigation. On the contrary, the preponderance of precedents unassailably sustains the view that equity is persuasive of preserving the status quo as far as rights of the party under litigation are concerned.

5. Reference is required to be made to a Three-Judge Bench decision in Jayaram Mudaliar Vs. Ayyaswami and Others, in which it was clarified that this principle does not affect pre-existing rights such as a valid charge or mortgage on a property. Secondly, their Lordships observed as follows:

50. It is evident that the doctrine, as stated in Section 52, applies not merely to actual transfers of rights which are subject-matter of litigation but to other dealings with it "by any party to the suit or proceeding, so as to affect the right of any other party thereto". Hence, it could be urged that where it is not a party to the litigation but an outside agency, such as the tax Collecting authorities of the Government, which proceeds against the subject-matter of litigation, without anything done by a litigating party, the resulting transaction will not be hit by Section 52. Again, where all the parties which could be affected by a pending litigation are themselves parties to a transfer or dealings with property in such a way that they cannot resile from or disown the transaction impugned before the Court dealing with the litigation, the Court may bind them to their own acts. All these are matters which the Court could have properly considered. The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward.

This decision was noticed in Rajender Singh and Others Vs. Santa Singh and

Others, whilst further clarifying that alienees acquiring rights in immovable property which is the subject matter of litigation are bound by the decision even though they may not have been a party thereto. Their Lordships were called upon to analyze the relevance of lis pendens on prescriptive rights.

6. Khem Chand was decided without alluding to Saila Bala. It was in the context of Section 54 of the CPC which prescribes that where the lis is for the partition or separate possession of an undivided estate assessed to revenue, the Collector would possess jurisdiction over the dispute. Section 52 of the TP Act pertains to the pendency of a suit dealing with any right to Immovable property and places an embargo on the transfer of such property except with the permission of that Court. Therefore, Section 54 of the CPC plainly merely mandates that disputes with regard to lands paying revenue should be brought before the Collector or his nominee. The procedural provision of Section 54 of the CPC does not even attempt to whittle down the substantive provision, viz. Section 52, contained in the TP Act. Their Lordships have specifically mentioned that the claim of the assignee pendente lite was undisputed. The ratio thus would not apply to instances where the claim/right of the transferee is contested and challenged.

7. In Anil Kumar their Lordships noted the provisions of Rules 3 and 10(2) of Order I and Rule 10 of Order XXII of the CPC and opined that - "since the respondent is not a party to the agreement of the sale, it cannot be said that without her presence the dispute as to specific performance cannot be determined. Therefore, she is not a necessary party". In Pirthi alias Sansi etc. Vs. Jati Ram and others etc., the Supreme Court rejected the decision of the First Appellate Court which had granted compensation in lieu of specific performance of the contract for sale of immovable property keeping in mind that the property had been sold and its possession had been delivered to a third party during the pendency of the legal proceedings. The High Court had reversed this position and this received the imprimatur of the Apex Court.

8. Surjit Singh was decided with only Order XXII Rule 10 of the CPC in perspective. Their Lordships opined that since the alienation/assignment was made in defiance of restraint Orders, justice as well as public policy would be defeated if the transaction was recognized and given effect to, and therefore the assignees were not entitled to be impleaded. The Court refused to implead the assignees pendente lite, inter alia, for the reason that they had purchased the suit property after the passing of Preliminary Decree and in clear defiance of the restraint orders injuncting any alienation or assignment. In a similar factual matrix their Lordships opined in Dhanna Singh and Others Vs. Baljinder Kaur and Others, that - "apart from the doctrine of lis pendens u/s 52 of the TP Act, the subsequent purchaser does not get any right to lead any evidence, as he stepped into the shoes of the first defendant who had given up the right to lead evidence". Savitri Devi Vs. District Judge, Gorakhpur and Others, is oftentimes cited in which the doctrine of lis pendens had been applied. A closer reading, however, discloses that the issues were totally different and revolved around the

infraction of a temporary injunction. A mother had filed a suit for maintenance against her four sons and prayed for the creation of a charge over the ancestral property of the family. By consent, an order directing the sons not to sell the property to any third party came to be passed. Despite the ad interim injunction a sale was made to the third party who was impleaded by the Orders of the Court. The Court found that Surjit Singh was not relevant at all. Instead, it appears to have proceeded under Order I Rule 10 as well as Order XXII Rule 10 of the CPC. *Davendra Kumar Sarewgee v. Purbanchal Estates (P) Ltd.* (2006) 9 SCC 199 relies on *Raj Kumar and Amit Kumar* but the facts which their Lordships had countenanced were totally different to the typical *lis pendens* inasmuch as it was observed that - "the High Court has already impleaded Respondent 1 as a party-respondent in the proceedings in the same suit arising from the determination of mesne profits. If Respondent 1 is to be impleaded as a party-respondent in the execution petition relating to the mesne profits we find no reason not to implead it as a party-petitioner in the execution of the decree for ejection".

9. Our analysis vouchsafes that apart from *Amit Kumar*, and possibly *Saila Bala*, the only other decision on the other side of the watershed is *Raj Kumar*. Property was sold by the Defendants to a third party and a specific representation had been made by the former that the property was not the subject matter of any litigation. It was held that the *lis pendens* transferee was entitled to move an application under Order IX Rule 13 of the CPC to set aside the decree passed against his transferor. The Court pointedly distinguished *Surjit Singh*, noting that the ratio of this case was predicated on Order XXII Rule 10 of the CPC.

10. Aligning ourselves with the preponderant opinion of the Supreme Court, we would conclude that a *lis pendens* transferee/purchaser has no right for impleadment either under Order I Rule 10, Section 146 or Order XXII Rule 10 of the CPC. We fully appreciate that *lis pendens* does not prohibit a transfer; it, however, mandates that the transferee will be fully bound by the decree that may be passed against his transferor. In order to overcome this problem, Courts frequently are called upon to and do pass prohibitory injunctions restraining the parties from creating any third party interests in the *lis* property. When orders to this effect are passed, it is not *lis pendens* which comes into operation but Order XXXIX of the CPC attracting and inviting contempt of Court proceedings and accordingly impleadment becomes just and equitable either u/s 146 or Order I Rule 10 or Order XXII Rule 10 of the CPC.

11. In *Sarvinder Singh* the Defendant had sold the property to a third party during the pendency of an action for Specific Performance. The Court held 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 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 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".

12. In Bibi Zubaida the Supreme Court refused to implead a third party who had purchased the property during the pendency of the suit but without seeking leave of the Court as was required by Section 52 of the TP Act, "being a transferee pendente lite without leave of the Court cannot, as of right, seek impleadment.... There is no absolute rule that the transferee pendente lite without leave of the Court should in all cases be allowed to join and contest the pending suits".

13. Raj Kumar enunciates that the doctrine of lis pendens ordains that nothing new should be introduced while a lis is pending; that a defendant cannot deprive a plaintiff of the fruits of his decree by alienating the property; that the alienee would step into the shoes of the defendant regardless of whether the alienee had sought impleadment under Order XXII Rule 10 of the CPC.

14. The question before their Lordships in Sunil Gupta was whether a purchaser of a property belonging to a deceased testator should be impleaded as a party in probate proceedings. Their Lordships reiterated the view that a transferee pendente lite, without leave of the Court, cannot be impleaded as a party; that a plaintiff in the suit is dominus litis. Therefore, the Court is not called upon to exercise its discretion.

15. The most recent Judgment on the vexed question of the rights of a pendente lite transferee for impleadment is available in Sanjay Verma. The law has been encapsulated in the following paragraph. We can do no better than reproduce the said paragraph:

12. The principles specified in Section 52 of the TP 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 pendens embodied in Section 52 of the TP 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. The section only postulates a condition 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.

16. As a result of our research and analysis of decisions rendered by the Apex Court, it appears to us that the preponderant view of the Supreme Court of India is that a transferee/purchaser of property, which is the subject matter of

litigation, obtains no right to be impleaded in that litigation, even though he is bound by the outcome of the litigation, because of the doctrine of lis pendens. Where there is a deliberate violation of an injunction, or where the Court perceives that the alienee/purchaser/transferor was aware of the pendency of litigation, Courts have not found any obstacle or reason to refuse to implead them. It seems to us that where there has been a deliberate concealment/misrepresentation of the factum of the pendency of litigation by a party to the litigation, equities may come into play in favour of transferee. Even so, the Court should not be oblivious or blind to the equities in favour of the parties to that litigation, who should not be reduced to a position of disadvantage merely because the transfer is to a third party without notice. If we have to choose between the two innocent parties, we would side with the person who has secured his rights by approaching the Court. The transferee/purchaser has the option to initiate criminal action since a deliberate misrepresentation as to the pendency of litigation would lead to criminal liability. Where consideration has been paid, proceedings for its recovery would be maintainable. It is trite that Section 52 of TP Act, which gives statutory expression and recognition of the equitable doctrine of lis pendens, does not get attracted in every litigation. Its operation is restricted to those genre of litigation where the vortex is the right to Immovable property and where such Immovable property is transferred or otherwise dealt with by any party to the suit. In all other cases, Section 146 or Order I Rule 10 or Order XXII Rule 10 of the CPC may spring into operation. The rigours of lis pendens can be insulated against only with the leave of the Court and it would cause violence to this statutory provision if a party is allowed audience before a Court despite its not having taken the requisite prior permission. There is an admission ticket for suchlike audience, which is in the form of receiving the authority of the Court prior to the transaction. We draw strength from the celebrated Judgment, which has been made venerable by the passage of a half century, reported as Razia Begum Vs. Sahebzadi Anwar Begum and Others, which enunciates that a person can be impleaded in a suit only if he/she has a direct interest in contradistinction to a commercial interest in the pending lis. If this is the law across the board, then a fortiori, where a statutory prohibition such as Section 52 of the TP Act is in force, a party having a commercial interest cannot force itself into a litigation even in the face of the principle that the plaintiff is dominus litis. The discussion would not be complete without referring to Section 91 of the Indian Trusts Act, 1882 (Trust Act), Section 19(b) of the Specific Relief Act, 1963 (SR Act), Section 40 of the TP Act and Order XXI of the CPC. Section 91 of the Trust Act ordains that where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold that property for the benefit of the later to the extent necessary to give effect to the contract. A plain reading of this provision reinforces the principle of lis pendens. The usual polemic which is articulated for justifying impleadment of a person subsequently acquiring some interest in the suit property is made irrelevant by this provision. We say this because if the

plaintiff succeeds in its suit for specific performance, the person acquiring an interest subsequently is statutorily bound to convey the property to the plaintiff. Section 91 is equitable in nature and its endeavour and vision is to dissuade third parties from rendering a contract or litigation ineffectual since that third party holds the property merely for the benefit of the earlier purchaser or the plaintiff, as the case may be. Of course, the substratum of the Section is the requirement that the subsequent purchaser should have had knowledge of the previous agreement. Section 40 of the TP Act prescribes that where a third party is entitled to the benefit of an obligation arising out of a contract annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon, such right or obligation may be enforced against a transferee with notice thereof. The illustration is poignant. It clarified that if A contracts to sell Sultanpur to B and while the contract is still in force, he sell Sultanpur to C who had notice of the contract with B, B may enforce the contract against C to the same extent as against A. The conjoint and holistic reading of all these provisions leads to the conclusion that the subsequent purchaser has a title entirely subservient to the party who already has a previous contract and, therefore, the former's interests are totally inefficacious unless the latter perfects it by consent. A perusal of Section 19(b) of the SR Act would clarify that specific performance of a contract may be enforced against any person whose claim is predicated on title obtained from one of the parties but subsequent to the contract of the other party except if he has paid full value in good faith without notice of the original contract. We reiterate that all these provisions have the effect of completely negating or diluting the rights of a transferee pendente lite.

17. It is also advantageous to refer to the fasciculus comprising Rules 97 to 102 in Order XXI of the CPC which deals with "resistance to delivery of possession to Decree Holder or purchaser". Rule 101 lays down that proceedings under Rule 97 and Rule 99 shall be determined by the Executing Court itself and not by a separate suit. Rule 102 which contemplates the transferee pendent lite clarifies that nothing in Rule 98 and Rule 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the Judgment Debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of such person. Therefore, the transferee pendente lite cannot raise objections to his dispossession from the suit property. In other words, even under the provisions of the CPC a transferee pendent lite does not have the protection of the law.

FAO(OS) 217/2008 & CM No. 6855/2008

18. The factual matrix is convoluted, as is consistently the cast in this category of cases. The Appellant, S.N. Arora, had prayed for but had been declined impleadment in the suit for Specific Performance filed by Brokers and Brokers Private Limited (B&B). The suit property H-1481, Chittaranjan Park, New Delhi-110 019 is owned by Nilambar Rudra Pal (Nilambar D-2) who had entered

into an Agreement to Sell in April/September, 2001 with Om Prakash Bhola (Bhola D-1). B&B, in turn, entered into an Agreement to Sell with Bhola D-1 for the suit property in July, 2004 to which Nilambar D-2/Owner has signed as a confirming party. In other words, this was the second Agreement to Sell. By a Notice dated 21.3.2005 issued by Nilambar D-2 to Bhola D-1, the first Agreement to Sell of April/September 2001 was terminated. As a consequence thereof, Bhola D-1 terminated the Agreement to Sell dated 1.7.2004 with B&B/plaintiff. This led to the filing of the pending Suit No. 1463/2005 for Specific Performance, on the first date of hearing whereof the learned Single Judge had ordered that - "in the meanwhile, any transfer of the suit property would govern by the principle of lis pendence". Dissatisfied with the failure to secure an injunction, B&B had assailed that Order by FAO(OS) No. 369/2005 which was dismissed as withdrawn. Succinctly stated, Nilambar D-2/Owner as well as Bhola D-1 have posited that the first contract had been terminated before the filing of the Suit. Meanwhile, S.N. Arora [Arora/Applicant] filed IA No. 9994/2007 under Order I Rule 10 of the CPC, seeking impleadment in the Suit which has been hotly contested by all the parties.

19. Arora/Applicant alleges that the suit property originally belonged to Shri Harindra Rudra Pal son of late Shri Surendra Rudra Pal by virtue of a registered Lease Deed dated 23.7.1975 executed in his favour. Shri Harindra Rudra Pal had expired on 28.9.2000 and was survived by his wife and two sons namely Basanti Rudra Pal, Bishambar Rudra Pal and Nilambar D-2. Arora/Applicant further alleges that the wife of Harindra Rudra Pal and his son Bishambar Rudra Pal executed a registered Relinquishment Deed dated 15.12.2004 in favour of the other son- Nilambar D-2. For the said reason, Nilambar D-2 became the sole and absolute owner of the said property. Nilambar D-2 then entered into an agreement with Arora/Applicant in terms of which a Special Power of Attorney dated 13.9.2005 was executed in favour of Arora/Applicant before the Sub-Registrar. By means of this Special Power of Attorney Arora/Applicant was allegedly authorized by Nilambar D-2 to represent him before the office of M.C.D., L&DO, BSES, Water Supply Department and other concerned civil Departments with the objective of construction of the Basement, Ground Floor, First Floor and Second Floor with terrace as duly sanctioned by the concerned Authority. On the same day, that is 13.9.2005, a Collaboration Agreement was also said to have been executed between Arora/Applicant and Nilambar D-2 according to the terms and conditions contained therein and Appellant was authorized by Nilambar D-2 to undertake construction and get the mutation of the said property effected in his name within one year; thereafter, on being satisfied with the construction raised, Arora/Applicant would have become entitled to the Basement, Ground Floor and Second Floor with terrace and proportionate land beneath the said property and Nilambar D-2 would be paid an amount of ` 56,50,000/- together with the absolute rights of the First Floor. The said amount was to be paid at the time of execution of the Collaboration Agreement.

20. By virtue of the Special Power of Attorney in his name, Arora/Applicant got the mutation effected from the M.C.D. & L&DO in 2006. Subsequent thereto, in 2006, Nilambar D-2 executed a General Power of Attorney in his favour to get the permission to raise construction on the mutated land and get the site plans approved from the appropriate authority.

21. It is pleaded that since the property had been earlier sealed by the concerned Authority on account of unauthorized construction, steps were taken by the Arora/Applicant to get the property desealed from the Authority. It has been averred that during this course of events the Arora/Applicant became aware of the suit filed by B&B claiming its rights with regard to the property in which Arora/Applicant asserts his ownership. According to Arora/Applicant, he is a bonafide owner of the suit property and he was ignorant of any pending litigation regarding the said property. Thus, he seeks impleadment as a Defendant in the present suit asserting that he is a necessary and proper party.

22. The plaintiff opposed the Application filed by Arora/Applicant inter alia on the ground that another suit being suit No. 1194/2007 has already been filed by Arora/Applicant for injunction in this Court. It is therefore pleaded that Nilambar D-2 is the true owner of the suit property and Arora/Applicant is simply an attorney of the owner of the property and, therefore, has no right to seek impleadment by way of the present Application. The plaintiff controverts existence of any valid Collaboration Agreement being signed or executed by and between Nilambar D-2 and Arora/Applicant. It is, further pleaded that an agreement was executed, the same is not duly registered and thus has no force in the eyes of law. The alleged Collaboration Agreement as mentioned by the Applicant is also said to be without consideration.

23. As far as the stipulation the payment of ` 56,50,000/- in future to get the proportionate rights on First Floor are concerned, the same are mere contingencies and nothing is settled or finalized. The said documents are alleged to be false and are said to have been created and set up by Arora/Applicant to defeat the claim of plaintiff. The rest of the statements made by Arora/Applicant are also denied by the plaintiff.

24. There is, prima facie, no causal connection between the Agreement which is the subject matter of Suit No. 1463/2005 and the Collaboration Agreement dated 27.7.2002. If the set of documents executed in favour Arora/Applicant are assumed to be genuine, they are facially parallel/distinct to the transaction pleaded in the Suit. Assuming that the Collaboration Agreement can be the subject matter of a Suit for Specific Performance, Arora/Applicant could have filed such an action and prayed for an appropriate injunction.

25. By Notice dated 2.9.2005, published in the Newspaper Rashtriya Sahara, Bhola D-1 had intimated the public at large that the Agreement with B&B stood cancelled. Arora/Applicant alleges that a collaboration Agreement dated 13.9.2005 was executed between himself and Nilambar D-2 pertaining the suit

property.

26. CS(OS) No. 1194/2007 titled S.N. Arora v. Om Prakash Bholra has been filed by Arora/Applicant praying for a permanent injunction against the Defendants from "interfering in the construction process being carried out" at the suit property. Significantly, the ostensible and titular owner is neither a party to the suit nor has any relief been claimed against him. Shorn of legal intricacies and principles, there is irrefutable wisdom in insisting on the prior approval of the Court before which litigation is pending, that is, the pendente lite pragmatism. This obviates the need for the Court to unravel the true position which lies within the labyrinth of legal maneuvers and machinations.

27. The pendency of this suit notwithstanding the subject impleadment application which has been rejected by the impugned Order, the endeavour of Arora/Applicant is to force himself into another litigation in which he finds no mention and plays no role whatsoever. A perusal of the Application filed by Arora/Applicant discloses that he has relied on a Special Power of Attorney dated 13.9.2005 executed in his favour by Nilambar D-2 which has allegedly been duly registered. It is averred by Arora/Applicant that a Collaboration Agreement of the same date was executed in his favour by Nilambar D-2. It is alleged that a sum of ` 56,50,000/- was paid by Arora/Applicant to Nilambar D-2, for which a Receipt was executed. These documents are on the record. This is extremely significant since the first Order passed in Suit No. 1463/2005 filed by B&B is dated 21.10.2005 and, therefore, predates that Suit.

28. The learned Single Judge, after noting the conflicting views expressed in two different Judgments of Supreme Court, iterated that the exercise of powers under Order XXII Rule 10 CPC is discretionary, and by invoking the principles of equity and justice held that it was not proper to allow the impleadment application. Though we agree with the learned Single Judge that the application deserves to be dismissed, we make bold to say that the legal position that commends itself to us is that in cases where lis pendens is applicable, any transferee pendente lite, should not be impleaded as a party by the Courts as that would enlarge the scope of the litigation; and as stated earlier, would militate against the principle of dominus litis. Courts should abjure allowing such a transferee to be impleaded in the suit. This is especially so since the transferee pendente lite can always institute a separate suit impleading the titular owner as defendant and request that the suit be tagged alongwith the earlier suit. Thus, his interests can be adequately protected without the necessity of his getting himself impleaded in the earlier suit.

29. In light of this analysis of law, the Appeal is held to be without merit and is dismissed. CM No. 6855/2008 is dismissed. Keeping the facts of the case in mind, the Appellant shall pay costs of ` 30,000/-.

FAO(OS) No. 653/2009 & CM No. 18685/2009

30. The Appellant vide this Appeal seeks setting aside of the Order rejecting his

impleadment in CS(OS) No. 776/2008. The said Suit has been filed by Shri Om Raj Khurana praying for a declaration that he is the sole legatee of the suit property by virtue of his father's Will dated 24.2.2007. The plaintiff has impleaded his siblings as the Defendants.

31. The Applicant/Appellant seeks impleadment in the said Suit as transferee and owner of three-fourth share of the suit property by virtue of a Sale Deed dated 2.5.2008 contending that since the Defendants have parted with the possession of the suit property, they may not be interested in appropriately prosecuting the proceedings and thus their interest in the property will not be adequately represented.

32. The subject Suit was filed by the plaintiff on 29.4.2008 and the Sale Deed which the Appellant/Applicant relies on is dated 2.5.2008. Thus, the said transaction is clearly struck by the doctrine of lis pendens. In view of our analysis in respect of law regarding the impleadment of a transferee pendente lite, the Applicant/Appellant has no right to seek impleadment in the suit filed by the plaintiff prior to execution of the Sale Deed. However, such a transferee will remain bound by the final outcome of the litigation with the transferred property at its fulcrum as per Section 52 of TP Act.

33. Appeal is without merit and is dismissed. CM No. 18685/2009 is also dismissed.

FAO(OS) No. 134/2010 & CM No. 3511/2010

34. The Appellants before us seek impleadment in Suit No. 2338/2008 titled Mahipal Singh v. Ram Kishan Khatri on the premise that they are the owners of the suit property and have acquired the title by virtue of registered Sale Deed dated 22.8.1976. The said Suit is a suit for Permanent Injunction filed by one Mahipal Singh against Ram Kishan Khatri, Ajit, Satish and Shamsher. The case of the plaintiff is that he is the owner of the property and the Defendants have been interfering with the peaceful possession of the suit property.

35. The plea of the Applicant/Appellant Shri Bhagwan is that he had transferred some part to the other Applicant, Smt. Sunita Rani and some part to a temple maintained by Pundit Anup Singh and that since Pundit Anup Singh has died, the said property would revert back to him. It is further stated that any outcome in the suit property in CS(OS) No. 2338/2008 would adversely affect the rights of the Applicants and thus they must be allowed to be impleaded in the said Suit.

36. The learned Single Judge has rejected the prayer of the Appellants on the ground that the Local Commissioner's Report shows that the plaintiff is in the possession of the suit property and that the questions raised by the Applicants are to be determined by a separate suit in separate proceedings. We find no infirmity in the said impugned Order of the learned Single Judge. The plaintiff in the subject matter suit has filed a case for Permanent Injunction and prays for protection against dispossession and interference to his right to peaceful

possession. The plaintiff is said to have got the legal possession of the property from Pundit Anup Singh as his successor. These proceedings are limited to the right to peaceful possession against the Defendants. The Applicants want to enlarge the scope of litigation by impleading themselves in these proceedings and, if permitted to do so, would run counter to the principle of dominus litis. These proceedings are independent of any right or title which the Applicants may have for which they may prefer a separate suit against the plaintiff based on title. Those questions need not be traversed by the Trial Court in the subject matter Suit.

37. For the aforesaid reasons, the Appeal is held to be without merit and is dismissed. CM No. 3511/2010 is also dismissed.