
(1993) 09 CAL CK 0031
In the Calcutta High Court
Case No : Extraordinary Suit No. 1 of 1985

Terai Tea Co. Pvt. Ltd.

APPELLANT

Vs

Kumkum Mittal and others

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), 115
Specific Relief Act, 1963 — Section 42 , 43
Transfer of Property Act, 1882 — Section 14, 40, 54

Citation : AIR 1994 Cal 191

Hon'ble Judges : Nure Alam Chowdhury, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : P.K. Das, Sen and Dipak Dey, for the Appellant; S.B. Mukherjee, Mrs. U.B. Mukherjee, S.P. Sarkar and Biswanath Samaddar, for the Respondent

Judgement

Ajit K. Sengupta, J.—This appeal is directed against the judgment and order dated 5th July, 1993 passed by the Court of the first instance dismissing the application of the appellant, Terai Tea Company (P) Ltd., for being added as a party defendant.

2. Shortly stated, the facts are that the Extra Ordinary Suit No. 1 of 1985 was instituted by Dharendra Nath Bhowmick, since deceased, and Smt. Reba Bhowmick the respondent No. 3 herein challenging, inter alia, certain dealings and transactions allegedly entered into between them and some of the respondents herein, in respect of, inter alia, Dharanipur Tea Estate situate in the District of Jalpaiguri and for restoration of possession of the said tea estate. The suit was instituted in the Court of the Assistant District Judge, Jalpaiguri and was marked Title Suit No. 78 of 1984.

3. The above suit was subsequently transferred to this Court from the Court of the Assistant District Judge, Jalpaiguri under Cl. 13 of the Letters Patent and was marked Extra Ordinary Suit No. 1 of 1985, (hereinafter referred to as the "Transferred Suit").

4. In or about March 1990, the appellant instituted a suit being No. 240 of 1990 (hereinafter referred to as "Suit for Specific Performance") against the said Dharendra Nath Bhowmick, since deceased, and Smt. Reba Bhowmick the respondent No. 3 herein for specific performance of an agreement dated 15th January, 1990, the subject matter whereof was the aforesaid tea estate.

5. The suit for specific performance was decreed on or about 2nd August, 1991. The New Red Bank Tea Co. Pvt. Ltd., the respondent No. 9, made an application for setting aside the said decree dated 2nd August, 1991. Having failed to obtain the said order, the respondent No. 9 preferred an appeal before the Supreme Court of India by way of Special Leave Petition.

6. By a judgment and order dated 9th September, 1991, the Supreme Court set aside the order and decree dated 2nd August, 1991 passed by this Court. The said order is as follows :--

"Special leave granted.

After hearing counsel on both sides and perusing the material before us we are convinced that the decree for specific performance granted by the Court in Suit No. 240 of 1990 cannot be sustained. We have come to this conclusion in view of pendency of the earlier suit, i.e., Suit No. 8 of 1984 filed by Dharendra Nath Bhowmick and his wife for a declaration that the transfer of control- ling interest of shares in the petitioner company was not valid and prayed for a declaration that the said Dharendra Nath Bhowmick has all the legal and equitable right, title and interest in respect of the said Dharanipur Tea Estate and for restoration of possession.

In fairness that suit and the present suit for specific performance ought to have been tried together. The suit for specific performance could not have been decreed by consent without determining the legal title to and factum of possession of the suit property. The title and possession could not have been decided without impleading the petitioner as a party to the suit. It is strange that a Receiver was appointed to take possession of the property with the help of the police.

We set aside the decree for specific performance made in Suit No. 240 of 1990 and request the High Court to try the Suit No 8 of 1984 and Suit No.240 of 1990 together.

We also set aside the order appointing the Receiver. The Receiver is directed to deliver back the possession of the property forthwith to the petitioner, The New Red Bank Tea Company Pvt. Ltd.

We are told that the petitioner has not filed the written statement in O.S. No, 8 of 1984. It is directed that it must file the written statement within four weeks from the date of furnishing a copy of the plaint.

The High Court may dispose of the suits as expeditiously as possible. Liberty is

reserved to the parties to move the High Court for any interim relief.

We are told that pursuant to the decree for specific performance, the sale deed has already been executed and registered. Needless to state that since we have set aside the decree for specific performance, automatically the sale deed stands cancelled.

No costs."

7. By the aforesaid order dated 9th September, 1991 the Supreme Court of India directed the Court of the first instance to try the instant suit as also the said suit for specific performance together.

8. On or about 15th March, 1992, the said Dharendra Nath Bhowmick died and the appellant applied for substitution of the heirs and legal representatives of Dharendra Nath Bhowmick in his place and stead. Such substitution was allowed.

9. By an order dated 18th November, 1992 passed by the Court of the first instance on an oral application to that effect, the New Red Bank Tea Company Pvt. Ltd. was added as a pro forma defendant in the suit for specific performance filed by the appellant, being Suit No. 240 of 1990.

10. The hearing of the said two suits started on or about 24th February, 1993. Till now only the pleadings in the said transferred suit have been placed. No issues in the said two suits have been framed nor has witness action commenced.

11. The appellant made an oral application for being impleaded as a party defendant in the said transferred suit. By an order dated 22nd March, 1993 the Court of the first instance granted leave to the appellant to make a formal application for addition of party.

12. The appellant duly made a formal application on or about 1st April, 1993 for being added as a party defendant in the said transferred suit. By an order dated 5th July, 1993, the Court of the first instance rejected the said application of the appellant. Hence this appeal.

13. It is on record that during the pendency of the said application for addition of the appellant before the Trial Court, the appellant had made an application for being added as party defendant to the transferred suit and for other reliefs before the Supreme Court. On 3rd June, 1993, an undertaking was given to the Trial Court that the application before the Supreme Court would not be proceeded with and, in fact, would be withdrawn. The said order dated 3rd June, 1993 passed by the Court of the first instance is as follows:--

"Attention of the Court has been drawn to the fact that while the application for addition of parties is pending for disposal before this Court, an application has since been filed before the Hon"ble Supreme Court seeking similar reliefs along with other directions. Mr. Kapoor, appearing for the party who has filed the said petition submits that the said application will not be proceeded with and he has instruction from his client undertaking to withdraw the said application. Since this

undertaking is made by the petitioner through his counsel Mr. Kapoor the same is accepted by the Court. The matters will appear for order on coming Thursday regarding disposal of the application for addition of party.

All parties to act on a signed copy of the minutes of this order on the usual undertaking."

14. Mr. Mukherjee, learned counsel appearing for the respondents, the New Red Bank Tea Company Pvt. Ltd., and Robin Paul contended that no leave should be given to the appellant to prefer the instant appeal. He has submitted that Terai Tea Company Pvt. Ltd. is not a party to the transferred suit being Extraordinary Suit No. 1 of 1985. According to him, the appellant is not a person aggrieved and as such not entitled to move or prefer this appeal. He contends that the plaintiff was not petitioner before the Trial Court. The plaintiff as dominus litis did not think it proper to make any application for addition of the appellants herein as a party to the suit. The appellant herein, Terai Tea Company Pvt. Ltd., a stranger to the proceedings made the application which resulted in the impugned order. The appellant is not a party aggrieved and, therefore, not entitled to prefer the present appeal.

15. Reliance has been placed on the decision of the Supreme Court in *Thammanna Vs. K. Veera Reddy and Others*, . There the Supreme Court was considering the question as to who can appeal against an order dismissing election petition; in other words, who is an aggrieved person in that context. There, the Supreme Court observed as follows (at pp. 117, 119):--

"A preliminary objection has been raised by the learned counsel for respondent No. 1. It is submitted that Shri Thammanna is not competent to maintain this appeal, because he does not fulfil the character of a "person aggrieved by the judgment of the High Court. It is emphasised that it was not necessary for the election-petitioner to join Shri Thammanna as a respondent because no relief was claimed against him; that he was impleaded as respondent 5 only as a matter of form, that he did not participate in the proceedings before the High Court; not joined issue with respondent 1. It is pointed out that according to the judgment of the High Court, the contest was only between the election-petitioner and respondent 1, while the original respondents 2 to 7, including Thammanna, were proceeded against ex parte. In short, the objection is that since the appellant could not be said to be a party adversely affected by the judgment of the High Court, he has no locus standi to prefer this appeal.

Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something." (As Per James L.J. in *Re Sidebotham* (1880) 14 Ch D 458) referred to by this Court in *Bar Council of Maharashtra Vs. M.V. Dabholkar*

and Others, and Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,

16. We are, however, unable to accept the contention of Mr. Mukherjee. The meaning of the expression "person aggrieved" may vary according to the setting and context of the facts of a particular case. The question is whether the person has suffered any legal grievance or not. If a decision has been pronounced which may deprive him of something or may affect his title to something, he will be undoubtedly a person aggrieved. Supreme Court in P.S.R. Sadhanantham Vs. Arunachalam and Another, , has observed that the words "person aggrieved" do not include a mere busy body who is interfering in things which do not concern him. In this case, the appellant has filed a suit for specific performance of an agreement, the subject matter of which is the Dharanipur Tea Estate. The appellant is seeking to enforce the said agreement. It cannot, therefore, be said that the appellant is a mere busy body. So far as the subject matter of the transferred suit is concerned, the Appellant has a direct interest in the subject matter of the transferred suit under a commercial agreement. That apart, the appellant is directly concerned in the outcome of the transferred suit.

17. In our view, therefore, the appeal is maintainable.

18. The next contention is that the order under appeal is not an appealable order.

19. Learned counsel contends that the order refusing to add the petitioner as a party does not have the effect of finally determining any controversy forming the subject matter of the suit itself or any part thereof. The order does not affect the question of the court's jurisdiction or any question of limitation. The order does not decide any matter of moment or any valuable right of the parties.

20. Reliance has been placed on the following observations of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, :

"Thus, in other words, every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the Appellate Court in appeal against the final judgment.

What kind of an order will constitute a judgment within the meaning of clause 15 of the Letters Patent and will become appealable as such must necessarily depend on the facts and circumstances of each case and on the nature and character of the order passed. This Court had also the occasion to consider as to what may constitute a judgment within the meaning of clause 15 of the Letters Patent in certain cases. In the case of Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York, this Court referring to the earlier decision of this Court in the case of Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others,

observed at p. 550 (of SCR) : (at p. 1721 of AIR) -- "This Court in Asrumati Debi's case said that a judgment within the meaning of clause 15 of the Letters Patent would have to satisfy two tests. First, the judgment must be the final pronouncement which puts an end to the proceedings as far as the Court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability though it may not be necessary that there must be a decision on merits. "This Court further observed at p. 555 (of SCR) : (at p. 1722 of AIR), The view of the High Courts of Calcutta and Madras with regard to the meaning of "judgment" are with respect preferred to the meaning of "judgment" given by the Rangoon and Nagpur High Courts". This Court also held at p. 556 (of SCR): (at p. 1722 of AIR) -- "In finding out whether the order is a judgment", within the meaning of clause 15 of the Letters Patent it has to be found out that order affects the merits of the action between the parties by determining some right or liability. The right or liability has to be found out by a Court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability. In my opinion, an exhaustive or a comprehensive definition of "judgment" as contemplated in clause 15 of the Letters Patent cannot be properly given and it will be wise to remember that in the Letters Patent itself, there is no definition of the word "judgment". The expression has necessarily to be construed and interpreted in each particular case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of Court's jurisdiction or the question of limitation, such an order will normally constitute "judgment" within the meaning of clause 15 of the Letters Patent. I must not however, be understood to say that any other kind of order may not become judgment within the meaning of clause 15 of the Letters Patent to be appealable under the provisions thereof. As already stated, it is not necessary to decide in the present case whether the order in question would be appealable under clause 15 of the Letters Patent as judgment, and I, therefore, refrain from expressing any opinion on this question."

21. The contention of Mr. Mukherjee that order under appeal is not an appealable order cannot, however, be accepted. In the case relied on by Mr. Mukherjee, that is to say, Shah Babulal Khimji Vs. Jayaben D. Kania and Another, Supreme Court observed as follows (at pp. 1816-1817):--

"The various instances given by us would constitute sufficient guidelines to determine whether or not an order passed by the trial Judge is a judgment within the meaning of the Letters Patent. We must, however, hasten to add that instances given by us are illustrative and not exhaustive. We have already referred to the various tests laid down by the Calcutta, Rangoon and Madras High Courts. So far as the Rangoon High Court is concerned we have already pointed out that the strict test that an order passed by the trial judge would be a judgment only if it amounts to a decree under the Code of Civil Procedure, is legally erroneous and opposed to the very tenor and spirit of the language of the

Letters Patent. We, therefore, do not approve of the test laid down by the Rangoon High Court and that decision, therefore, has to be confined only to the facts of that particular case because that being a case of transfer, it is manifest that no question of any finality was involved in the order of transfer. We would like to adopt and approve of generally the tests laid down by Sir White, C.J. in Tuljaram Row's case (1912 ILR 35 Mad 1) (supra), (which seems to have been followed by most of the High Courts) minus the broader and the wider attributes adumbrated by Sir White, C.J. or more explicitly by Krishnaswamy Ayyar, J. as has been referred to above."

22. The Supreme Court then proceeds to lay down the considerations which must prevail with the Courts in deciding the question whether an interlocutory order is a "judgment" within the meaning of the Letters Patent. Supreme Court observed thus (at p. 1817):

"Apart from the tests laid down by Sir White, C.J. the following considerations must prevail with the Court:

(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or cause grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind."

23. Thus, the Supreme Court accepts that discretionary or interlocutory order is appealable where it causes grave and substantial injustice and contains the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

24. The order under appeal may deprive the appellant ultimately of a right which it asserts. The order contains the traits and trappings of finality inasmuch as it decides the questions in controversy in an ancillary proceeding to the suit. As

indicated earlier, the appellant is vitally interested in the Dharanipur Tea Estate which is the subject-matter of both the suits. Accordingly, it cannot be said that the order under appeal has not finally determined the right of the appellant, so far as the transferred suit is concerned. When two parties are in dispute in an action at law and the determination of the dispute will directly affect the third person in his legal right, then the Court in its discretion may allow him to be added as a party on such terms as it thinks fit.

25. In *Gurtner v. Circuit* reported in 1968 (2) QB 587 the Court of Appeal interpreted Order 15, Rule 16 of the Rules of the Supreme Court which is in pari materia with Order 1, Rule 10 of the CPC 1908. There the Court observed as follows:

"When two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to "be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome."

26. The next contention of Mr. Mukherjee is that, firstly, the tests laid down in Order 1, Rule 10 of the CPC are not satisfied in the instant case; secondly, the Court suo motu did not require the presence of Terai Tea Co. Pvt. Ltd, for decision of the suit; thirdly, Order 1, Rule 10 contemplates a petition by a party to the proceedings, neither the plaintiff nor any of the defendants made any application for addition of Terai Tea Co. Pvt. Ltd. as a party; fourthly, the suit was filed in 1985 when Terai Tea Co. Pvt. Ltd. was nowhere in the contemplation of the parties. The purported so-called agreement for sale between the Bhowmicks and Terai Tea Co. Pvt. Ltd., was entered in 1990. A mere agreement for sale does not create any interest in the property. In this connection, reference has been made to the decision of the Supreme Court in *Rambaran Prosad Vs. Ram Mohit Hazra and Others*, . There the Supreme Court observed as follows (at p 749):--

"Reading S. 14 along with S. 54 of the Transfer, of Property Act it is manifest that a mere contract for sale of immovable property does not create any interest in the immovable property and it, therefore, follows that the rule of perpetuity cannot be applied to a covenant of pre-emption even though there is no time limit within which the option has to be exercised. It is true that the second paragraph of S. 40 of the Transfer of Property Act makes a substantial departure from the English law, for an obligation under a contract which creates no interest in land but which concerns land is made enforceable against an assignee of the land who takes from the promisor either gratuitously or takes for value but with notice. A contract of this nature does not stand on the same footing as a mere personal contract, for it can be enforced against an assignee with notice. There is superficial kind of resemblance between the personal obligation created by the contract of sale described under S. 40 of the Act which arises out of the contract,

and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon and the equitable interest of the person purchasing under the English Law, in that both these rights are liable to be defeated by a purchaser for value without notice. But the analogy cannot be carried further and the rule against perpetuity which applies to equitable estates in English law cannot be applied to a covenant of pre-emption because S. 40 of the statute does not make the covenant enforceable against the assignee on the footing that it creates an interest in the land."

27. Mr. Mukherjee then contends that Terai Tea Co. Pvt. Ltd. does not have a direct interest in the subject-matter of the litigation and as such not entitled to be added as a party under Order 1, Rule 10 of the Code of Civil Procedure. He has relied on a decision of *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, . There a learned single Judge of this Court observed that the Court should- not grant any speculative addition of a party. There the Court held (at p 246):

As I have said before, power to add parties under Order 1, Rule 10(2) of the CPC is guided by the well settled consideration that the presence of the party intended to be added before the Court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit."

28. Mr. Mukherjee also contends that the appellant does not have a direct interest in the subject-matter of the litigation and as such not entitled to be added as a party under Order 1, Rule 10 of the Code of Civil Procedure. He has relied on several decisions in this connection.

29. The first decision cited is in the case of *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, . There the Supreme Court observed as follows (at p. 895):-

"13. As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one 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; but in some case, it may raise controversies as to the power of the Court, in contradistinction to its inherent jurisdiction, or in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would

be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Sections 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the Court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the Court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of "present interest", as evolved by the case law relating to dispute about property, does not apply with full force; and

(7) The rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of res judicata. It is narrower in one sense and wider in another.

30. Our attention has been drawn to a judgment of a learned single Judge of Punjab and Haryana High Court in the case of Manmohan Singh v. Sat Narain reported in AIR 1971 Punj and Har 400. In that case the question was whether in a suit for specific performance of sale agreement, person claiming under a subsequent agreement in respect of the same property can be added or not. There the Punjab and Haryana High Court observed as follows (at pages 401, 402):

"In the instant case the relief sought was of specific performance against defendant 1 on the basis of agreement to sell alleged to have been executed in favour of the plaintiff. The mere fact that another agreement has also been subsequently made by the same prospective seller in favour of another person is of no significance. Defendant 2 who claims to have a contract of sale in respect of the same property executed in his favour subsequent to the earlier contract in favour of the plaintiff has no interest in or charge on that property. As a matter of fact, an agreement itself creates no such charge and there is no legal right which could possibly be adjudicated in the present suit. A subsequent purchaser of property may have an interest in the property and his presence might be necessary as specific performance of the contract of sale may have to be ultimately obtained against him he being the successor-in-interest of the seller, but no such question arises when there is merely an agreement to sell. Defendant-respondent 2, if he had any remedy under law, could enforce the same in a separate suit and his presence before the Court in the suit for specific performance founded on an earlier agreement to sell was neither necessary nor proper. It would have only led to misjoinder of parties.

31. Our attention has been drawn to a decision of a learned single Judge of this

Court in Narayan Chandra Garai and Others Vs. Matri Bhandar Pvt. Ltd. and Another, . There it was held (at pp. 360, 361):

"The main consideration seems to be whether or not the presence of the petitioner is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in this suit. If the question at issue between the parties can be worked out without anyone else being brought in the stranger should not be added as a party. As already stated before the petitioner cannot be considered to be a proper or a necessary party. That she may be eventually affected by the judgment or in the execution decree against the defendant No. 2 is not a cogent ground to make her party. As was pointed out by the Supreme Court in the case of Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, the eventual interest of a party in the fruits of litigation cannot be held to be a true test of impleading parties according to the Code of Civil Procedure. A compulsion other than one based on positive rule of law upon the plaintiff to litigate against a person not of his own choice must be unfair. Reference may be made in this connexion to the case of Official Receiver of South Kanara Vs. Bastiao Souza and Others,

32. Our attention has also been drawn to a decision of a learned single Judge of this Court in Mohammadbhai Sk. Mohsinbhoi and Others Vs. Trustees for the Improvement of Calcutta and Others, . In that case, the suit was for declaration. There the learned single Judge held that the petitioner is neither a proper nor a necessary party who is required to be joined in the proceeding and the proceedings between the plaintiffs and the defendant can be effectively and completely disposed of in his absence. There is no dispute between the petitioner and the plaintiffs, which requires adjudication requiring him to be made a party defendant to the proceedings.

33. Mr. Mukherjee contends keeping in view the aforesaid decisions, that the right of the petitioner, if any, is based on speculation. If an ex parte decree is suffered by the defendant No. 3 and/or found that there is collusion between himself and the plaintiffs, the petitioner can seek the Court's protection and necessary orders can be passed at any stage of the proceedings. That apart, an agreement for a sale does not create any interest in property and the agreement for sale between the defendant No. 3 and the petitioner at best is subject to the adjudication in the pending proceedings. Thus, unless shown that the petitioner had a present right and is legally interested in the adjudication between the plaintiffs and the defendants, it could not be said that the result of the proceedings would affect him legally.

34. Lastly, he has relied on a decision in Miquel Sanchez and Compania S.L. v. Result (Owners), reported in 1958 Probate 174, where it was held:

"Since the "cause or matter" was not liable to be "defeated" by the non-joinder of the third parties as defendants, nor were the third parties persons "who ought

to have been "joined" as defendants in the first instance, nor were the third parties persons whose presence before the Court as defendants was "necessary" in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the "cause or matter", the Court had no jurisdiction to add the third parties as defendants."

35. We are, however, unable to accept the contention of Mr. Mukherjee. It is no doubt true that under Order 1, Rule 10 of the Code of Civil Procedure, the Court can suo motu add a party. But, it does not provide that the Court cannot add a party if such a party makes an application in that behalf. Nor does it prevent a third party from being added as a party to suit. An application for addition of party can be made not only by a person having interest in that suit property. What Mr. Mukherjee wants us to hold is that in the case where a person wants to be added as a party, he must show that he is having interest in the suit property. The power of the 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.

36. We have earlier set out the order passed by the Supreme Court. The direction of the Supreme Court was that both the suits should be heard together. In the other suit, that is, the suit for specific performance, the concerned respondents have been added as party defendants. There is no reason why in this suit, the appellant should not also be added as a party defendant. The addition of the appellant is necessary to avoid the possibility of a multiplicity of the judicial proceedings. If the appellant is kept out of the suit and ultimately the same is dismissed, such outcome will not bind the appellant. The appellant will nonetheless has to challenge the decree passed in such suit by way of a separate proceeding only to continue the suit for specific performance. Unless this is done, the defendants in the suit for specific performance will set up the decree in the transferred suit to defeat the suit for specific performance. In our view, the learned Judge was not right in holding that the presence of the appellant is not necessary for factual and complete adjudication of the matter in dispute.

37. For the foregoing reasons, we allow the appeal and set aside the order under appeal and direct that the appellant be added as a party defendant.

38. Let the amendment be affected within two weeks from date on a signed copy of the minutes of the operative part of the judgment and order.

39. Service of writ of summons is waived.

40. Let a copy of the amended plaint be served upon the Advocate-on-Record of the added defendant within one week after the amendment is affected.

41. Let the written statement be filed by the added defendant within two weeks after the service of the copy of the amended plaint. Cross order for discovery within two weeks thereafter, inspection forthwith thereafter. The Court of the first

instance, however, will be at liberty to extend the time if the circumstances warrant such extension.

42. Stay asked for is refused.

43. All parties including the department are to act on a signed copy of the operative portion of the judgment and order on the usual undertaking.

Nure Alam Chowdhury, J.

44. I agree.

45. Order accordingly.