



5. Sub-Registrar, Bijaynagar, District Ajmer (Raj.).

-----Respondents

For Petitioner(s) : Mr. Jai Prakash Gupta
Mr. Abhimanyu Singh

For Respondent(s) : Mr. R K Daga

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

09/01/2024

1. Since, common question of law and facts are involved in these petitions, hence, with the consent of the counsel for the parties, both the matters are taken up and are being decided by this common order.

2. For the sake of convenience, the prayer mentioned in S.B. Civil Writ Petition No.13674/2022 is taken into consideration, the instant writ petition has been filed by the petitioner with the following prayer:-

"It is, therefore, most humbly prayed that Your Lordships may graciously be pleased to admit and allow this writ petition and entire record of the learned trial court be called for and:-

I) Issue a writ order or direction in the nature thereof thereby quash and set aside the impugned order dated 28.05.2022 (Annexure-7) passed by learned trial Court in Civil Suit No.17/2009 titled as Prahlad Kumar Vs. Smt. Usha and Ors.

II) Issue a writ order or direction in the nature thereof thereby the applications dated 08.12.2021 filed by the petitioner for impleadment may kindly be allowed.

III) Any other order or direction which the Hon'bl Court deems fit and proper may kindly be passed in favour of the petitioner.

IV) Cost of the writ petition be also awarded in favour of the petitioner."



3. Learned counsel for the petitioner submits that the plaintiff-petitioner (hereinabove referred to as "the plaintiff") purchased the property in question from the respondent Nos. 1 to 3 through a registered sale agreement dated 06.03.2008. Counsel submits that when the registered sale deed was not executed in favour of the plaintiff, he filed a suit for specific performance of agreement against the respondents. Counsel submits that during pendency of the suit, the brother of the father (paternal uncle) of respondent Nos. 2 and 3, i.e., Durjay Singh gifted the suit property in favour of one Ms. Pragya Singh, i.e., daughter of the respondent No.3 by way of a registered gift deed on 20.12.2018. Counsel submits that under the changed circumstances, the petitioner submitted an application under Order 1 Rule 10 CPC for impleadment of said Durjay Singh and Ms. Pragya Singh as defendants in the suit and at the same time, an application was submitted by the petitioner for amendment of the suit seeking cancellation of the registered gift deed 20.12.2018. Counsel submits that giving a reference of the judgment of the Hon'ble Apex Court passed in the case of **Kasturi Vs Iyyamperumal and Ors.** reported in **AIR 2005 SC 2813**, the Trial Judge rejected the application filed by the petitioner under Order 1 Rule 10 CPC. Counsel submits that while rejecting the said application vide impugned order dated 28.05.2022 the Trial Judge has recorded a finding of the fact that Durjay Singh and Ms. Pragya Singh are neither necessary nor proper party to the suit for specific performance of agreement filed by the plaintiff. Counsel submits that accordingly, the application filed by the petitioner seeking amendment in the suit filed under Order 6 Rule 17 CPC was also rejected. Counsel





submits that in order to avoid multiplicity of the litigation between the parties, it was necessary for the Trial Judge to have allowed the application filed by the petitioner under Order 1 Rule 10 CPC and also the application filed by the petitioner seeking amendment, by way of filing the application under Order 6 Rule 17 CPC. In support of his contention, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Sumti Bai Vs. Paras Finance Company** reported in **2007 (10) SCC 82**. Counsel submits that in view of the submissions made hereinabove, the impugned order passed by the learned Trial Judge be quashed and set aside and both the applications filed by the plaintiff/petitioner be allowed.

4. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that in a suit for specific performance, the party to the agreement are only necessary and proper party to the suit and no third party cannot be allowed to be impleaded as defendant.

5. In support of his contention he has placed reliance upon the following judgments:-

- i) **Kasturi Vs Iyyamperumal** reported in **2005 SC 2813**.
- ii) **Bharat Karsondas Thakkar Vs. Kiran Construction Company and Ors.** reported in **2008(13) SCC 658** and
- iii) **Surendra Kumar Khedwal Vs. Puurshottam Lal Banka and Ors.** in **S.B. Civil Writ Petition No.16383/2022** decided on 04.05.2023.

6. Counsel submits that since the controversy has arisen between the parties to the sale agreement, hence, no third party can be allowed to be impleaded as party to proceeding otherwise,



it will complicate the issue involved in the matter. Hence, under these circumstances, the learned Trial Judge has not committed any error in rejecting the applications and therefore, interference of this Court is not warranted.

7. Heard and considered the submissions made at Bar and perused the material available on the record.

8. This fact is not in dispute that a registered agreement to sale was executed between the plaintiff and the defendant Nos.1 to 3 on 06.03.2008. This fact is also not in dispute that registered sale deed of the property in question was not executed in favour of the plaintiff and then he filed a suit for specific performance of agreement against the defendant Nos. 1 to 3. This fact is also not in dispute that during pendency of the suit, a registered gift deed was executed by one Durjay Singh in favour of one Ms. Pragya Singh on 20.12.2018 and the land in question was gifted by the said Durjay Singh in favour of Ms. Pragya Singh. Under these circumstances, the petitioner submitted two applications i.e. one application under Order 1 Rule 10 CPC for impleading the above two persons as defendants and another application was submitted under Order 6 Rule 17 CPC for seeking amendment in the suit and challenged the validity of the registered gift deed dated 20.12.2018. Both the applications filed by the petitioner were rejected by the learned Trial Judge on the basis of judgment passed by the Hon'ble Apex Court in the case of **Sumti Bai (supra)** which distinguished the ratio, as propounded in the case of **Kasturi(supra)**, by recording the following finding in para No.14 which reads as under:-

"14. As discussed hereinearlier, whether respondent Nos.1 and 4 to 11 were proper parties or not, the



governing principle for deciding the question would be that the presence of respondent Nos.1 and 4 to 11 before the Court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos.2 and 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. It is an admitted position that the respondent Nos.1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors. reported in 1996(10) SCC, 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the respondent Nos.2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos.1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to





execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property."

9. From a perusal of the judgment passed by the Hon'ble Apex Court in the case of **Sumti Bai (supra)**, it is clear that their Lordships of the Hon'ble Apex Court were of the opinion that there is no absolute proposition that whenever a suit for specific performance is filed, no third person can be impleaded as party to the suit. Their Lordships were also of the opinion that in order to avoid multiplicity of the proceedings between the parties, the third party should be impleaded as defendant in the lis, pending before the Court.

10. Even in the case of **Amit Kumar Shaw and another V. Farida Khatoon and another** reported in **(2005) 11 SCC 403** the Hon'ble Apex Court has categorically held that combined reading of the provisions of Order 1 Rule 10 as also Order 22 Rule 10 of the Code and keeping in view that principles laid down under Section 52 of the Act that it is not necessary that all subsequent purchasers may not be allowed to become a party in the suit if one is filed for specific performance of contract prior to obtaining



the right by the subsequent transferee. While considering these aspects that Apex Court has categorically held in paragraphs 9, 10, 14 and 16, which read thus:-

"9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

- I) When he ought to have been joined as plaintiff or defendant, and is not joined so, or
- II) When, without his presence, the questions in the suit cannot be completely decided.

10. The power of a 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 the person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.

14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But, the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where





the transfer is of entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

11. Subsequently, in the case of **A. Nawab John Vs. V N Subhramaniam** reported in **2012 (7) SCC 738** while considering the law laid down in the case of **Amit Kumar Shaw (supra)**, the Apex Court has reiterated the practice of permitting the subsequent purchaser to participate in the suit proceedings, if the suit is for specific performance of contract.

12. Looking to the peculiar facts and circumstances of the present case, where during pendency of the suit the property in question has been gifted by Durjay Singh in favour of Ms. Pragya Singh on 20.12.2018 by way of executing a registered gift deed and if the aforesaid persons are not allowed to be impleaded as defendants, it would definitely create multiplicity of the proceedings between the interested parties, this Court is of the considered opinion that Durjay Singh and Ms. Pragya Singh are



necessary and proper party to be impleaded in the suit and the registered gift deed executed by Durjay Singh in favour of the Ms. Pragma Singh is liable to be challenged on the point of its validity and the averments to this effect are liable to be incorporated in the plaint, as has been prayed in the application under Order 6 rule 17 CPC filed by the petitioners seeking amendment.

13. Accordingly, both these petitions succeeds, the impugned order dated 28.05.2022 stands quashed and set aside. The applications filed by the petitioner under Order 1 Rule 10 CPC and Order 6 Rule 17 CPC stand allowed.

14. Trial Court is directed to proceed accordingly.

(ANOOP KUMAR DHAND),J

Aayush Sharma/109-110