HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

M.P. No.2496/2019

Tilak Sahkari Grah Nirman Sanshtha Maryadit

Versus

Aqeel Ahmed & Ors.

Date of Order	16.09.2019
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioner: Shri Sanjay K. Agrawal, Advocate. For Respondents No.1 to 5 : Shri Shobhitaditya, Advocate. For Respondent No.6 : Shri Rajesh Pancholi, Advocate. Respondent No.13 : Shri Kapil Jain, Advocate. For Respondent No.14/State : Ms. Aditi Verma, Panel Lawyer.
Law laid down	The fact that dominus litis lies with the plaintiff, but the court is not bound to follow the said principle, the discretion lies with the court to permit the intervener to be impleaded in the suit looking to the facts and circumstances of the case.
Significant Para Nos	8 to 35

Reserved on : 18.07.2019
Delivered on : 16.09.2019

(ORDER)
(16.09.2019)

The instant petition has been filed by the petitioner being aggrieved by the order dated 06.05.2019 (Annexure-P/17) passed in R.C.S.No.176A/2003, whereby an application for impleadment has been rejected.

2. The facts necessary for disposal of the case lie in a narrow compass. Suffice it to say that the plaintiffs/respondents No.1 to 5 filed a suit for declaration and permanent injunction. As per the cause title in relation to the property i.e. piece of land measuring 16.62 acres comprised in Khasra No.114 situated in Village Nayapura, Tehsil Huzoor, District Bhopal alleging therein their rights, title interests and possession over the said property on the basis of Inayatnama as detailed in the suit plaint and hereby asking for declaratory decree in relation to their title and possession over the property in question and further a decree for permanent injunction restraining the defendants from interfering in their peaceful possession and from alienation.

As per the history of the suit property, it was the private property of Ex-ruler of Bhopal Nawab Hamiddulla Khan and after his death his daughter Mehar Taj Sajida Sultan Begum was recognized as the sole successor by the Presidential Notification of the Union of India and she became the owner of all the properties of Late Nawab Hamidulla Khan. In accordance with the aforesaid Presidential Notification, the Principal Secretary, Department of Revenue, Government of M.P. passed

an order dated 11.11.1955 and her name was recorded in the revenue record as bhumiswami. The suit property was also included in the list of private properties of Nawab of Bhopal.

Nawab Mehar Taj Sajida Sultan Begum entered into an agreement with respondent No.6 on 13.02.1990.

The State Government took over certain land including the suit property under the provisions of the Urban Land Ceiling Act. Exemption claimed under the Ceiling Act was refused. Hence, a writ petition was filed before this Court and in compliance to the order of this Court, the Principal Secretary, Revenue Department vide order dated 14.10.1998 released the part of land with a condition that the released land would be sold to respondent No.6/Society alone.

In the meantime, Nawab Sajida Sultan Begum expired leaving behind three successors, namely Nawab Mansur Ali Khan Patoudi (son), Begum Sabiha Sultan (daughter) and Begum Saleha Sultan (daughter). Nawab Mansur Ali Khan Patoudi and Begum Sabiha Sultan honoured the agreement and executed sale-deed of the released land in favour of respondent No.6 and got it registered. The sale-deed contained delivery of possession to respondent No.6. Thereafter, one of the successors i.e. Begum Saleha Sultan d/o. Nawab Sajida Sultan Begum challenged the sale-deed of respondent No.6 and instituted a Civil Suit bearing C.S.No.44-A/1998 for partition

claiming her one-fourth share in the property. The matter was compromised and a compromise decree was passed on 04.08.2000 in which it was held that the sale-deed of respondent No.6 for area measuring 9.465 acres and remaining land was given to Begum Saleha Sultan.

After three months of aforementioned compromise dated 04.08.2000, the plaintiff/respondent No.1 herein namely Aqeel Ahmed instituted the present civil suit only for declaration, title and permanent injunction. The defendants seriously contesting the suit and disputed the title and possession of the plaintiffs over the said land.

The petitioner is a registered Cooperative Society having an object of making provision of plots for residence of its members. In order to secure the land for the said purpose, the petitioner/Society entered into a registered contract for sale on 16.08.2000 for the entire land in question with all the plaintiffs. The copy of the agreement is available on record as Annexure-P/3 to the petition. Thereafter, the petitioner/Society vide three registered sale-deeds dated 23.11.2000, 24.11.2000 and 24.11.2000 purchased the entire land in question measuring 16.62 acres in pieces from the plaintiffs/respondents No.1 to 5 and secured full-fledged title and possession over the same. The petitioner/Society has been continuously enjoying the title and physical possession of the same till date with all rights and

interests therein as owner of the property. The registered sale-deeds are annexed as Annexure-P/4 to P/6 to the petition.

During the pendency of the suit, the petitioner-Society had filed an application for their impleadment on the basis of agreement for sale but that application was dismissed by order dated 11.07.2005 (Annexure-P/7). The application was rejected on the ground that mere agreement for sale does not confer any title upon the Society. Further, the plaintiffs/respondents No.1 to 5 had also moved another application for impleadment of the petitioner as co-plaintiff but the said application was also dismissed on the same premise vide order dated 12.01.2006 (Annexure-P/8).

Since the suit was being prosecuted by the plaintiff-respondents No.1 to 5 with due diligence, the petitioner was keeping an eye over the progress of the suit. However, during the pendency of the aforesaid suit, the plaintiffs and the defendants/respondents No.6 to 13 colluded among themselves and entered into a collusive compromise and accordingly a collusive compromise application under Order 23 Rule 3 r/w Section 151 of CPC dated 21.03.2018 was filed before the Trial Court. As soon as the petitioner whispered about the collusion, it moved an application for impleadment before the learned Trial Court under Order 1 Rule 10 r/w Order 22 Rule 10 and Section 151 of CPC. It is also worth-mentioning that a Special Leave

Petition arising out of interlocutory order passed in the suit proceedings pending between the parties before the Supreme Court in which on 11.05.2018 an application for impleadment by the petitioner-Society was also promptly moved but that SLP was dismissed by order dated 13.07.2018 permitting withdrawal of the SLP at the hands of the plaintiffs giving liberty to the petitioner-Society for taking recourse as per law and the order of withdrawal of SLP would not come in way. The order dated 13.07.2018 (Annexure-P/11) is also available on record.

The petitioner/Society, after filing the impleadment application, had a reason to peruse the compromise application dated 21.03.2018 and then only it came to know about the ill-dealings and contents of the same in detail. Thus, an application under Order 6 Rule 17 read with Section 151 of CPC was also moved by the petitioner-Society praying for incorporation of additional ground in the impleadment application by including a specific ground of collusion for impleadment. Another application under Section 151 of CPC was also filed praying therein prior disposal of the impleadment application before consideration of compromise application.

The learned Trial Court after hearing all parties concerned, passed the impugned order dated 06.05.2019 rejecting the applications against which this petition is filed.

3. The learned counsel for the petitioner has contended that the order impugned is contrary to law causing grave injustice to the petitioner and therefore deserves to be set aside. He further submitted that as per the settled view of the Apex Court, the transferee *pendent lite* is an interested party having vital interest in the *lis* and which should ordinarily be joined in the proceedings so as to safeguard his interest. Thus, the petitioner-Society deserves to be impleaded in the matter. It is further contended that the Court below failed to consider the interest of the petitioner-Society that by making payment of substantial amount, it has purchased the entire suit land and as such the petitioner deserves to be impleaded in the matter. It has also been contended by the learned counsel for the petitioner that the Trial Court has committed grave error in considering the settled principle of law, the object behind the impleadment of transferee *pendent lite* was to avoid collusion and resultant injury and multiplicity of proceedings. Further, it has been contended that the case of the petitioner was on strong footing wherein the plaintiff, after parting with the interest in entirety to the subject matter in favour of the petitioner-Society and having left with no stakes, colluded with the defendants and in order to unlawfully gain profit, proposed to abandon their claim in the suit over a substantial part of the suit property in favour of the defendants. Accordingly, just to prevent

the mockery of the law and equity and to safeguard the interest of the petitioner-Society, his application for impleadment ought to have been allowed. It has also been contended by the learned counsel for the petitioner that in the present case, principle of *dominus litis* is not applicable because impleadment as co-plaintiff was sought on the basis of assignment of interest during the pendency of the suit. He has also contended that the law of limitation is not applicable in the present case. He has also contended that the principle of constructive *res judicata,* merely because earlier applications were dismissed, would not be applicable. He has further contended that just because the contract was contingent, his application cannot be rejected as such contract was legal and valid. It has also been contended by the learned counsel for the petitioner that the Trial Court committed grave error in not considering that it was bound to exercise the jurisdiction vested in it in judicial and reasonable manner. The dismissal of the impleadment application proves to be gravely unjust, illegal, improper and unsound causing irreparable injury and gross injustice to the petitioner-Society.

4. The learned counsel for the petitioner placed reliance upon the decisions reported in **2009 (3) MPLJ 472 (Hameeda Begum and another v. Champa Bai Jain and others); (2005) 11 SCC 403 (Amit Kumar Shaw and another v. Farida Khatoon and another); (1999) 2 SCC 577 (Savitri Devi v.**

District Judge, Gorakhpur and others); (2007) 10 SCC 82 (Sumtibai and Others v. Paras Finance Co. and Others); (2010) 7 SCC 417 (Mumbai Interrnational Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and others) and **(2013) 5 SCC 397 (Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others)**.

5. Shri Rajesh Pancholi, learned counsel appearing for respondent No.6 has opposed the contentions raised by the learned counsel for the petitioner and in the reply it is stated that in the suit filed by the plaintiffs, no prayer was made for cancellation of sale-deeds executed in favour of the respondent No.6 and also relief for setting aside the compromise decree was not claimed. Accordingly, the suit filed by the plaintiffs was barred by Section 34 of Specific Relief Act and Section 11 of CPC. It has also been contended by the learned counsel for respondent No.6 that the claim of the plaintiffs was passed upon the contention that the suit property had been gifted to his father in the year 1936, but the original Inayatnama (gift deed) was not produced by the plaintiffs. He has further stated that the plaintiffs have made false statement that they are in possession of the suit property and moved an application for grant of temporary injunction which was dismissed by the Trial Court by order dated 05.02.2001 and further stated that all the

documents produced by the plaintiffs were suspicious and cannot form any basis of title. It has also been contended by the learned counsel for respondent No.6 that vide order dated 11.07.2005 (Annexure-P/7), the application for impleadment was already rejected then subsequent application for same purpose is not maintainable. He further submitted that the plaintiffs also moved an application under Order 1 Rule 10 of CPC stating therein that they sold the suit property to the present petitioner and it had been done even prior to the first application for impleadment. This fact was suppressed and second application was also rejected. He has also stated that those orders were not challenged and attained finality and as such the present application was again moved by the petitioner for his impleadment as co-plaintiff was rightly rejected by the Court below. It has also been contended that those applications were rejected long back but no steps were taken by the petitioner for 13 years. Then after such a long time, the application for impleadment cannot be allowed and the Trial Court rightly rejected the same whereas he could have filed a suit for specific performance of the contract and for declaration of title, possession but that was not done. The learned counsel for respondent No.6 has also contended that the claim for impleadment of the petitioner is based upon the sale-deeds (Annexure-P/4 to P/6) and these sale-deeds are illegal and have

no sanctity in the eyes of law because no consideration passed on and the sale-deeds are nothing but a contingent contract based upon happening of a particular event i.e. if a judgment is passed in favour of the plaintiffs, then only cheque given would be encashed within four months of the expiry of period of appeal. He submitted that the cheque could be encashed within the period of three months but not after 18 months. It has also been contended by the respondent No.6 that the Supreme Court in its order very categorically observed that withdrawal of the SLP is a right of the party that has filed the same and so the Supreme Court disallowed the request of the petitioner for its impleadment. As such, it is clear that continuing a litigation is a discretion of the party, who has come with the said litigation and the Court cannot give directions to continue with the litigation against the will of the litigant. As per the counsel for respondent No.6, parties entered into the agreement just to close down the long drawn litigation from 1998 onward and there is no collusion between them. The learned counsel for respondent No.6 placed reliance upon the decisions reported in (**2005) 7 SCC 190 (Ishwar Dutt v. Land Acquisition Collector and another)**; **AIR 1993 SC 787 (Junior Telecom Officers Forum and others v. Union of India and others); AIR 1979 SC 551 (Pandit Ishwardas v. State of Madhya Pradesh and others); 1995 Supp-(2) SCC 388 (Afzal and another v. State of**

Haryana and others); AIR 1994 SC 853 (S.P. Chengalvraya Naidu v. Jagannath and others); (2018) 2 SCC 87 Raj Kumar Bhatia v. Subhash Chander Bhatia) and **(1996) 5 SCC 539 = (1997) 1 MPLJ 324 (Sarvinder Singh v. Dalip Singh and others)**.

6. The learned counsel for respondent Nos.1 to 5 has also supported the contentions raised by the learned counsel for respondent No.6 and in addition thereto added that the contract which is the foundation of the claim of the petitioner is not legal as per the provisions of Sections 32 and 33 of the Contract Act. He has also submitted that allowing the impleadment of the petitioner would give third dimension to the suit as there cannot be two *inter se* disputes between two plaintiffs. He has placed reliance upon the decisions reported in **AIR 2007 SC 215 (Shyamali Das v. Illa Chowdhry and Ors.); 2014 (2) MPWN SN 64 (Nandlal and others v. State of M.P. and another)** and **(1991) 3 SCC 338 (K. Venkata Seshiah v. Kanduru Ramasubbamma)**, to contend that addition of parties resulting in triangular fight, such addition cannot be allowed.

7. I have heard the arguments of the learned counsel for the parties at length and perused the record.

8. From the available facts of the case, it is seen that the suit filed by the plaintiffs/respondent Nos.1 to 5 for the suit land on the basis of Inayatnama and claimed title over the

same, whereas the defendants denied the title of the plaintiffs. The plaintiffs vide registered sale-deeds dated 23.11.2000, 24.11.2000 and 24.11.2000 sold the entire suit land to the petitioner-Society and as such the petitioner has become the owner and is in possession of the land. The plaintiffs entered into an agreement with the petitioner on 16.08.2000 and vide registered contract, contract for sale of entire suit land has been executed and thereafter, sale-deeds have been executed in pursuance to the said contract by the plaintiffs in favour of the petitioner-Society and as such the petitioner-Society has been enjoying the title and physical possession of the suit land. During the pendency of the suit, the petitioner-Society moved an application for their impleadment on the basis of agreement for sale but the said application was rejected vide order dated 11.07.2005 (Annexure-P-7) on the ground that the agreement to sale does not contain any title upon the Society.

9. Thereafter, another application was filed by the plaintiffs (respondent Nos. 1 to 5 herein) for impleadment of petitioner-Society as co-plaintiff which was also dismissed on the same premise vide order dated 12.01.2006 (Annexure-P-8). During the pendency of the suit, the plaintiffs and defendants jointly moved an application under Order 23 Rule 3 r/w Section 151 of CPC on 21.03.2018. The petitioner thereafter immediately moved an application for its impleadment under

Order 1 Rule 10 and Order 22 Rule 10 of CPC and also moved an application under Section 151 for deciding the application of impleadment prior to deciding the application of compromise as alleged by the petitioner that the plaintiffs and defendants colluded with each other and moved an application for compromise decree in which large area of the suit land, which is a direct interest of the petitioner, is being affected and as such, he is a necessary party to prosecute the matter further. He has also opposed the application under Order 23 Rule 3 CPC. The application was opposed and the Trial Court by the impugned order, rejected the said applications of the petitioner.

10. Undisputedly, the petitioner had moved an application under Order 1 Rule 10 of CPC for asking its impleadment in the suit stating therein that there is a contract to sale between the plaintiffs and the petitioner and therefore he is a necessary party to be impleaded in the suit but the trial Court rejected the application mainly on the ground that the *dominus litis* lies with the plaintiffs and secondly agreement to sale does not confer any title over the petitioner and, therefore, he cannot be said to be a necessary party especially under the circumstance when the plaintiffs' right over the suit property was yet to be determined. It is also observed by the Court below that if at all the petitioner was aggrieved, he should have filed a suit for specific performance. It is also undisputed that thereafter the

plaintiffs moved an application for impleadment of the petitioner stating therein that they have sold the suit property to the petitioner-Society and registered sale-deed had been executed, therefore, the petitioner had interest in the matter and it was a necessary party to be impleaded in the suit but that application was also rejected by the Court below on the ground that the earlier application for impleadment moved by the petitioner was rejected and the second application had been moved just to prolong the proceedings and to delay the matter. If the nature of both the applications which had been considered by the Trial Court for impleadment of the petitioner-Society is seen, it is clear that the principle of *dominus litis* lies with the plaintiffs as has been contended by the counsel for the respondents, is not applicable in the present case for the reason that at the first instance the application was moved by the petitioner itself but the second time, it was moved by the plaintiffs themselves asking the petitioner's impleadment as co-plaintiff. The Court below rejected the application filed by the plaintiffs only on the ground that the earlier application filed by the petitioner was rejected for impleadment, therefore, second application had been moved just to delay the proceedings. The Trial Court could have allowed the second application on the ground that it is the plaintiffs who had moved the application and if the principle of *dominus litis* lies with the plaintiffs then there was no reason for

the Trial Court to reject the application. But, this contention of the respondents in the present facts and circumstances, as existing, has no substance. Secondly, first application was rejected by the Court below on the ground that the agreement to sale does not contain any right over the petitioner, therefore, his request for impleadment in suit was not found proper but second application was admittedly containing an averment that sale-deed had been executed and right conferred to the petitioner, as such he was necessary party and ought to have been impleaded. But that second application was also rejected by the Court below. Although learned counsel for the respondents contended that the said sale-deed/contract was contingent depending upon the fate of the present suit and as such no consideration passed on, therefore, no right conferred to the petitioner. However, in my opinion, the validity of the contract was not required to be seen when the application for impleadment had to be considered.

11. The learned counsel for the petitioner submits that as per the law laid down by the Supreme Court, if the petitioner is able to substantiate that there is slight semblance of title existed, then he can be considered to be a necessary party and his request for impleadment should be allowed. It is contended by the petitioner that the trial Court acted arbitrarily, exceeded its jurisdiction examined the validity of the sale-deed at the

stage of deciding the application filed under Order 1 Rule 10 and wrongly followed the judgment of **Sarvinder Singh** (supra) because the facts in that case were altogether different. In the said case, sale-deed executed during the pendency of suit and a purchaser moved an application for his impleadment, therefore, the Court has held that the principle of *lis pendens* Section 52 of the Transfer of Property Act will be applicable and by operation of the same, the right of the purchaser would be governed whereas in this case the sale agreement was executed in the year 1998 and the sale-deeds were executed in the year 2000, therefore, the principle of *lis pendens* has no role to play in the matter and as such, the law laid down in the case of **Sarvinder Singh** (supra) has no application whereas the said case is foundation of the order impugned. A perusal of the order impugned gives indication that there is force in the contention of the petitioner. I am also convinced with the contention that while deciding the application under Order 1 Rule 10 CPC, the Court below should not have examined the validity of the sale-deeds on the basis of which the person asking him to be a necessary party, claiming his right, title and interest over the property. Even otherwise, the facts and circumstances of the present case are altogether different. Here in this case, the impleadment was sought as the plaintiffs and defendants colluded with each other and moved an application under Order 23 Rule 3 of CPC asking

for compromise decree. In such circumstances, there was no finding required to be given by the Court below in respect of title of the plaintiffs.

12. Accordingly, in my opinion relying upon a decision of **Sarvinder Singh** (supra) by the Court below was not proper for the reason that the said case has no applicability in the present facts and circumstances of the case.

13. As per the learned counsel for the respondent No.6, the application submitted by the petitioner-society for impleadment is hit by *res judicata* because the earlier application for the same purpose had already been rejected.

14. In reply to the said contention, the learned counsel for the petitioner has submitted that in the present facts and circumstances of the case, the principle of *res judicata* will not be applicable because filing an application for impleadment again is based upon a fresh cause of action given to the petitioner as the plaintiffs and defendants colluded with each other and moved an application under Order 23 Rule 3 of the C.P.C. to get the compromise decree which would ultimately affect the right of the petitioner. He has further submitted that this aspect of the matter has not been appreciated by the Court below and without considering the fresh cause of action, the application has been rejected also on the ground that the same is hit by *res judicata* as no fresh cause of action accrued in

favour of the petitioner. In the decision of the Supreme Court, placed reliance by the petitioner, in the case of **Hameeda Begum (supra)**, the Supreme Court has taken note of several decisions on this point and has been pleased to observe as under:-

> "In the instant case, there is a fresh cause of action with respect to necessity of plaintiff No.2, there is fresh cause of action and law of land is available in the shape of decision of Apex Court in Pramod Kumar Jaiswal and others vs. Bibi Husn Bano and others (AIR 2005 SC 2857) taking into consideration the intendment of section 11(d) of the TP Act laying down that there is no determination of tenancy by factum of purchase by the tenant from one of co-owner of the part of tenanted premises and liability to comply with the Rent Act continues. Previous decision cannot be said to operate as res judicata. Otherwise it would not be possible to get the accommodation vacated forever on the basis of landlord tenant relationship as there is no determination of tenancy, even after partition there are other co-tenants defendants No. 1 and 2 who will remain tenant, thus, the decision rendered earlier cannot operate as res judicata."

15. So far as the decision relied upon by the learned counsel for the respondent No.6 that the principle of res judicata is also applicable in the interim stages of the suit, is concerned, this legal position is undisputed that the principle of res judicata is also applicable in the proceeding of same suit but at different stages. However, here in this case, it is not a contention raised

by learned counsel for the petitioner that the principle of *res judicata* would not be applicable in a pending suit or at different stages, but it has been contended that in the changed cause of action, principle of *res judicata* will not be applicable and as per his submission, when the plaintiffs and defendants entered into a compromise and sought compromise decree, then the petitioner got a fresh cause of action for making request before the Court for its impleadment just to protect its interest or to prosecute the suit further as a co-plaintiff. Agreeing with the contention raised by learned counsel for the petitioner, I am not satisfied with the view taken by the Court below that the application submitted by the petitioner for impleadment as a co-plaintiff, is hit by res judicata.

16. Learned counsel for the petitioner has further submitted that an application for impleadment can be made at any stage, it is for the Court to decide whether an enforceable right of a person may be affected if he is not joined. He further submits that as per the facts and circumstances of the case, when the matter is being compromised in respect of the land which had already been sold-out by the plaintiffs through a registered sale-deed in favour of the petitioner and if it is not joined, then obviously its right would be affected. He relies upon a decision of the Supreme Court passed in the case of **Amit Kumar Shaw (supra)**, wherein the Supreme Court while

considering the provision of Order 22 Rule 10 and Order 1 Rule 10 of the C.P.C., has observed as under:-

> "Under Order 22 Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The application under Order 22 Rule 10 can be made to the appellate court even though the devolution of interest occurred when the case was pending in the trial court.
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> 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 of the proceedings.** Under this rule, a person may be added as a party to a suit in the following two cases:
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> *(1)* when he ought to have been joined as plaintiff or defendant, and is not joined so, or
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> *(2)* when, without his presence, the questions in the suit cannot be completely decided."
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> (emphasis supplied)

The Supreme Court has also observed that in a pending suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has discretion to make him party. Further, considering the Order 22 Rule 10, the Supreme Court has observed that an alienee would ordinarily be joined as a party to enable him to protect his interests. It is observed as under:-

> "**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 the 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, under 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."

17. As per the view taken by the Supreme Court hereinabove in the case of **Amit Kumar Shaw (supra)**, it is clear that it is a discretion of the Court to permit the alienee *pendente lite* to join as a party and to allow the application under Order 22 Rule 10 C.P.C., if the Court thinks fit that the person seeking his impleadment is having interest in the property and if he is not made party, he may not be in a position

to defend the suit. It is observed that to protect the interest and right, it is necessary that he should be allowed to join in the suit.

18. Learned counsel for the petitioner further relied upon a decision in the case of **Mumbai International Airport Private Limited (supra)**, in which the Supreme Court has considered the fact that it is a complete discretion of the Court to direct the impleadment of a party even though there is no application moved by any person in this regard. The observation made by the Supreme Court is as follows:-

> "**14.** 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 no 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 questions 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."

19. Learned counsel for the petitioner has also relied upon a decision passed in the case of **Savitri Devi (supra)**, in which the Supreme Court has observed as under:-

> "**9.** Order I Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and

settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In Khemchand Shankar Choudhari v. Vishnu Hari Patil [(1983) 1 SCC 18], this Court held that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit is a representative in the interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. The Court has taken note of the provisions of Section 52 of the Transfer of Property Act, 1882 as well as the provisions of Rule 10 of Order XXII CPC. The Court said: (SCC p. 21, para 6)

"It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard."

11. In Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay [(1992) 2 SCC 524], this Court discussed the matter at length and held that though the plaintiff is a "dominus litis" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. The Court said; (SCC p.529, para 8)

"8. The case really turns on the true construction of the rule in particular the meaning of the words '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'.

The court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that

> purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions."
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> The Court also observed that though prevention of actions cannot be said to be the main object of the Rule, it is a desirable consequence of the Rule. The test for impleading parties prescribed in Razia Begum v. Sahebzadi Anwar Begum (AIR 1958 SC 886) that the person concerned must be having a direct interest in the action was reiterated by the Bench."

As per the view taken by the Supreme Court, it is clear that despite the fact that the "*dominus litis*" lies with the plaintiff, the Court is not bound to follow the said principle, but can exercise its discretion at any stage of the suit directing addition of parties, if the Court finds that without impleading the said party in the suit, the Court would not be in a position to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

20. Learned counsel for the petitioner further submits that the third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute, but otherwise he should be permitted to be added. He submits that the Supreme Court in the case of **Sumtibai (supra)** has observed as under:-

"9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi vs. Iyyamperumal [(2005) 6 SCC 733]. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

13. As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed ((SCC pp.584-85, paras 9-12):-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of

their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving dock co. Ltd. vs. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed (ALL ER p.14 C-D):

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge…..'

10. In Home Office v. Dorset Yacht Co. (1970 (2) WLR 1140: (1970) 2 All ER 294 (HL) Lord Reid said, 'Lord Atkin`s speech... is not to be treated as if it were a statute definition it will require qualification in new circumstances'. Megarry, J. in Shepherd Homes Ltd. v. Sandham (No.2) (1971)1 WLR 1062 observed: 'One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament.' And, in Herrington v. British Railways Board (1972 (2) WLR 537) (HL) Lord Morris said: (All ER p.761c)

'There is always peril in treating the words of a speech or judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of

cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

‘Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.’” (emphasis supplied)

14. In view of the aforesaid decisions we are of the opinion that Kasturi’s case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

Here in this case, if the documents filed by the petitioner and averments made in the application are examined, then it is beyond doubt that it has some semblance of title over the suit property. There was agreement of sale between the petitioner and plaintiffs and thereafter, the sale-deeds executed by the plaintiffs in favour of the petitioner in respect of the suit property and if the matter is compromised between the plaintiffs and defendants, the right of the petitioner would be adversely affected.

21. Learned counsel for the petitioner has also placed reliance upon a decision of the Supreme Court passed in the case of **Thomson Press (India) Limited (supra)**, in which the Supreme Court has observed as under:-

> "It is well settled that no one other than the parties to an agreement to sell is a necessary and proper party to a suit for specific performance thereof. However, a simple reading of Order 22 Rule 10 CPC would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. Thus, independent of Order 1 Rule 10 CPC the prayer for addition/impleadment made by the appellant can be considered in the light of Order 22 Rule 10 CPC and thus the appellant can be added as a party-defendant to the suit. The application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC can always be invoked if the fact situation so demands.

> (Para 54)
>
> The Supreme Court in many cases has held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. Sometimes, a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendent lite can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires the interest in the entire estate that forms the subject-matter of the dispute. (Paras 55 and 56)"

From the facts of this case, it is apparent that the plaintiffs were contesting the suit for declaration of their title at one point of time, but thereafter, they lost interest and entered into a compromise with the defendants. The petitioner purchased the suit property from the plaintiffs and their sale was based upon the fate of the suit and as per the contingent contract executed between the plaintiffs and defendants, the sale had to be given effect only if the instant suit is decided in favour of the plaintiffs. Accordingly, the petitioner was trying to defend his right and to establish the title of the plaintiff, but that cannot be done unless it is allowed to be added as a party/co-plaintiff.

22. Learned counsel for the petitioner has contended that in the facts and circumstances of the case, it is clear that the

compromise application which has been filed by the plaintiffs and defendants, is not a *bona fide*, but it is a colluded application asking a collusive compromise decree just to finish the rights of the petitioner over the suit land. He submits that in such a circumstance, the court ought to have considered his application first and the same should have been allowed. It is also submitted by learned counsel for the petitioner that under the similar circumstances, the Allahabad High Court in the case of **Karuna Shankar Dube Vs. Krishna Kant Shukla** reported in **AIR 1972 All 478**, has dealt with almost similar facts and finally ordered that the application under Order 1 Rule 10 should have been considered first, as *prima-facie* the compromise sought between the parties appeared to be collusive. However, in this case, no such situation exists as the applications under Order 1 Rule 10 and Order 22 Rule 10 of the C.P.C. have already been considered by the Court below and rejected the same by the order impugned. However, while considering the application filed by the petitioner, the Court had to see whether the compromise decree which is being sought by way of application under Order 23 Rule 3 C.P.C., is *bona fide* or collusive.

23. I have perused the judgment of Allahabad High Court and I am also of the opinion that the conduct of the plaintiffs is not appreciable. On the one hand, they have initially moved an application for impleadment of the petitioner as a co-plaintiff,

executed the sale-deeds in its favour, received amount against the agreement to sale of the suit property and now they have entered into a contract with the defendants asking compromise decree from the Court and moved an application under Order 23 Rule 3 C.P.C. The conduct of the plaintiffs does not appear to be *bona fide.*

24. In a case decided by our High Court reported in **1980 MPLJ 803 (Dharamsingh Manrakhan Singh v. Jalima Hariya and another),** almost similar conduct of the party has been taken note of by the High Court and disapproved such conduct of the party and observed as under;-

> "The provisions of section 52, Transfer of Property Act are not meant for enabling a party who had no right, title or interest to snatch away the property from the hands of the purchaser *pendente lite* on the basis of an admission made by the co-defendant transferor subsequent to the transfer stating that he had no right, title or interest and that plaintiff was the owner. Admissions to be relevant must be made during continuance of the interest of the person making them. An admission made by the transferor after the transfer is not binding on the purchaser.
> Plaintiff filed a suit for declaration of title and injunction. Defendant No.1 denied his title but later transferred the property in suit to defendant No.2. Subsequently a compromise was arrived at between plaintiff and defendant No.1 whereby defendant No.1 admitted plaintiff's title and that he had no title. Before orders were passed on the compromise defendant No.2 applied and was made party to the suit. It was contended that defendant No.2 was bound by the admission of defendant No.1."

25. Looking to the view taken by the High Court in the above-mentioned case i.e. **Dharamsingh Manrakhan Singh** (supra), it is clear that the conduct of the plaintiffs in the present case cannot be considered to be *bona fide* and as such they have no right to defeat the interest of the petitioner with whom they entered into an agreement and executed the sale-deed in its favour by entering into compromise with the defendants of this suit. The High Court in the case of **Sampatrai Ambaram and another v. Madhusingh Gambhirji 1959 MPLJ 1162** has laid a law, tested object of Order 1 Rule 10 of CPC, as under:-

> "Under Order 1, rule 10 (2), Civil Procedure Code, the court has jurisdiction to join a person as a plaintiff or as a defendant whose presence is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights. It is not enough that the plaintiff's right, and the rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject matter. The intervener must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answers only if he can say that it may lead to a result that will affect him legally, i.e. by curtailing his legal rights."

26. Thus, in view of the discussion made hereinabove and the view of different courts taken note of, it is clear that whether an intervener is to be included as a party or not depends upon the fact that whether his non-joinder would affect his rights. If that is so then his presence is necessary. Here in this case, in view of the conduct shown by the plaintiff and the facts existing in the case admittedly the plaintiff entered into an agreement with the petitioner (intervener) and lateron executed the sale-deeds of the suit property and thereafter entered into an agreement with the defendants and moved an application for compromise and requested for compromise decree in respect of the suit property. The rights of the intervener would be affected if compromise decree is passed. As such, rejection of the application by the Court below, not permitting the petitioner to be included as co-plaintiff is contrary to law.

27. Learned counsel for the respondents No.1 to 5 relied upon a decision in the case of **K. Venkata Seshiah** (supra), in which the Supreme Court has observed that once the application of compromise is filed and the Court was satisfied about the genuineness of the compromise and was of the opinion that it was being done lawfully, the same has to be acted upon. According to the respondents, the validity of the compromise is yet to be examined, but here in this case, the question is altogether different. The Court below was to consider

whether the petitioner can be impleaded or not. This Court is also taking note of the correctness of the order passed by the Court below refusing to implead the petitioner as a co-plaintiff. Therefore, the said case relied upon by the respondents, is on different footing and is not applicable in the present case.

28. Further, learned counsel for the respondents placing reliance upon a decision in the case of **Raj Kumar Bhatia** (supra) submits that in a petition under Article 227 of the Constitution of India, the supervisory jurisdiction conferred to the High Court is confined only to see whether an inferior Court or Tribunal has proceeded within the parameters of its jurisdiction. In exercise of its jurisdiction under Article 227, the High Court does not act as an Appellate Court or Tribunal and it is not open to it to review or reassess the evidence upon which the Court below or Tribunal has passed an order.

29. The learned counsel for the respondent No.6 has relied upon the decision reported in **Junior Telecom Officers Forum** (supra), which is relating to Section 11 of CPC in which it is observed by the Supreme Court that the issue of *res judicata* applies when the issue has already been decided then the same cannot be reopened. But, here in this case and discussion made hereinabove it is observed that in the present case since new cause of action acquired by the petitioner and as such fresh

application can be filed again. Therefore, this judgment is not helpful for respondent No.6.

30. Learned counsel for respondent No.6 further relied upon a decision in the case of **S.P. Chengaivraya Naidu** (supra) in which the Court has dealt with the situation where fraud played by the litigant withholding of vital document and then it is observed that such a litigant has to suffer the consequences. However, in the present case the information in respect of execution of sale-deed was not disclosed at the respective time but it was lateron disclosed although that has no impact over any relief granted in favour of the litigant, therefore, such non-disclouser cannot be considered to be fraud played with the court and accordingly this case is not applicable especially when the plaintiff was also aware of the fact about the execution of sale-deeds and he has also not disclosed the said fact.

31. Learned counsel for respondent No.6 has also placed reliance on a decision in the case of **Afzal** (supra) in which the Supreme Court has dealt with a situation that the counsel made two contrary statements before the court in two different stages and those statements were ultimately found incorrect and that action of the counsel was deprecated. But, in this case the non-disclouser of sale-deed at the time of considering the application under Order 1 Rule 10 CPC, not

containing the date of execution of sale-deed, was not only the fault of the counsel for the petitioner but it was fault of the counsel of the plaintiff because he was also aware of the fact regarding execution of sale-deed, but he has also not disclosed. Even otherwise, the said incorrect statement has not given any benefit to the petitioner, therefore, this case has no application in the present case.

32. In the case of **Ishwar Dutt** (supra) the Supreme Court has considered the fact regarding application of principle of *res judicata* at different stages of the same proceeding but here in this case since new cause of action accrued in favour of the petitioner as alleged colluded compromise application was moved by the plaintiff and defendant, therefore, in view of the law laid down by the Supreme Court in case of **Hameeda Begum** (supra), subsequent application for the same purpose would not be hit by the principle of *res judicata*.

33. The Supreme Court in the case of **Thomson Press (India) Limited** (supra) has also observed as under:-

> "It is well settled that no one other than the parties to an agreement to sell is a necessary and proper party to a suit for specific performance thereof. However, a simple reading of Order 22 Rule 10 CPC would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. Thus, independent of Order 1 Rule 10 CPC the prayer for addition/impleadment made by the appellant can be considered in the light of Order

> 22 Rule 10 CPC and thus the appellant can be added as a party-defendant to the suit. The application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC can always be invoked if the fact situation so demands.
>
> The Supreme Court in many cases has held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. Sometimes, a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires the interest in the entire estate that forms the subject-matter of the dispute."

Thus the view taken by the Supreme Court as above, transferee *pendente lite* can be added as a party especially when his interest is substantial and not just peripheral.

In view of the discussion made herein above it is clear that the interest of the petitioner was substantial and not just peripheral and accordingly its application ought to have been allowed and it be permitted to be added as party.

34. The respondents have also relied upon a decision in the case of **Shyamali Das** (supra), in which the Supreme Court has dealt with the situation in which second application under Order 1 Rule 10 (2) of the Code of Civil Procedure, was

entertained and allowed. The Supreme Court has observed as under:-

> "**20**. The learned Reference Judge, therefore, was entirely correct in passing its order dated 22.6.2004. A finding of fact was arrived at therein that the appellant was not a party interested in the proceeding within the meaning of Section 3(b) of the Act. The said order attained finality. It could not have, thus, been reopened. Another application for impleadment, therefore, was not maintainable. It may be true that in the proceeding of a suit, the court can in a changed situation entertain a second application under Order I, Rule 10(2) of the Code of Civil Procedure. But, the learned Reference Judge having opined, while passing its order dated 26.2.2004, that the appellant was not a person interested, in our opinion, a second application despite the subsequent event was not maintainable."

Looking to the above observation, it is clear that this case has no application in the present case because as per the view of the Supreme Court, the appellant was not found to be an interested person, therefore, the second application despite subsequent event, was not maintainable. But, here in this case, it is observed in view of several decisions of the Supreme Court as well as High Court that the petitioner is an interested person as result of the case would directly affect his rights and he has successfully proved his semblance of title existing in the case. Thus, the decision in the case of **Shyamali Das** (supra) would also not help the respondents.

35. The respondents have placed reliance upon a decision in the case of **Sarvinder Singh** (supra) and from the discussion made hereinabove, it is observed that the case of **Sarvinder Singh** (supra) has no application in the present case, but the Court below has incorrectly adopted the observation made in the said case.

36. The reliance has also been placed on a decision in the case of **Nandlal** (supra), in which the High Court has observed by allowing the application under Order 1 Rule 10 that adding additional party resulting into triangular fight, such addition cannot be allowed. However, the Court has based its observation on the basis of the basic concept that the plaintiff being a *dominus litis*. Thus, this case has also no application in the present case because here in this case, the plaintiff himself moved an application for adding the petitioner as a party although said application was rejected by the Court without considering the fact that the plaintiff was a *dominus litis*. Even otherwise, here in this case, as per the discussion made hereinabove, the fate of the suit would directly affect the right of the petitioner, therefore, he should be allowed to be added as a party.

37. However, considering the order passed by the Court below, if finding given by the Court is perverse and not in

accordance with law, this Court has every right under the supervisory jurisdiction to interfere in the matter.

38. In view of the discussion made hereinabove and the view expressed by this Court taking note of several decisions of the Supreme Court as well as the High Court, it is apparent that it is a fit case in which this Court can interfere as the Court below has not considered the material aspect of the matter and has exceeded its jurisdiction rejecting the application of the petitioner to implead him as a party.

39. In view of the above, it is clear that the cases on which the respondents have placed reliance, have no application considering the facts and circumstances of the present case.

40. Resultantly, the petition is allowed. The order impugned is set aside. The application submitted by the petitioner for including him as a co-plaintiff is accordingly allowed.

(Sanjay Dwivedi)
Judge

shukla