

CASE NO.:
Appeal (civil) 5664 of 2006

PETITIONER:
Sanjay Verma

RESPONDENT:
Manik Roy and Ors

DATE OF JUDGMENT: 08/12/2006

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.
(Arising out of SLP (C) No.12513 of 2006)

Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Jharkhand High Court allowing application filed by the respondents in terms of Order I Rule 10 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The applicants are transferees of the property in dispute during the pendency of the suit.

Background facts in a nutshell are as follows:

Appellant filed a suit for specific performance of contract against one Rajeshwari Devi, respondent No.3. The suit is numbered as Title Suit No. 88 of 1991. The prayer in the suit was for a decree against the defendant for specific performance of agreements dated 25.12.1986 and 27.12.1990 by directing to the defendant No.1 to execute registered sale deeds. Further declaration was sought for to the effect that said defendant No.1 had no right to execute four sale deeds in favour of defendants 2, 3, 4 and 5. Permanent injunction was also sought for restraining the defendants from interfering in any manner in the peaceful possession of the plaintiff.

During the pendency of the suit an application in terms of Order XXXIX Rules 1 and 2 read with Section 151 CPC was filed on behalf of appellant for temporary injunction. Learned Subordinate Judge-I, Dhanbad granted temporary injunction in favour of the appellant. After the order of injunction was passed, Smt. Vinaya Devi, Defendant (respondent No.4 herein) transferred a portion of suit land in favour of one Mihir Kumar Chakraborty by Sale Deed dated 16.3.1993. Defendant Sanjay Prasad also transferred a portion of suit land in favour of one Shyam Kumar Datta by registered Sale Deed dated 13.7.1993. On 3.12.1997 said Shyam Kumar Datta further transferred a portion of the suit land in favour of respondent No.1-Manik Roy and Mihir Kumar Chakraborty vide registered sale deed dated 3.12.1997. The respondents filed an application in terms of Order I, Rule 10(2) CPC on 20.8.2005 for impleadment to contest the suit and to permit them to file written statement. Learned Subordinate Judge held that both Smt. Ahilya Jha and Manik Roy had admittedly purchased the

suit property after 1991 without obtaining leave of the court and thus the transfer is pendente lite and is clearly hit by Section 52 of the Transfer of Property Act, 1882 (in short the 'TP Act'). It was further observed that Manik Roy had purchased the property on 3.12.1997. Ahilaya Jha applicant had purchased the portion of the suit property on 9.12.2000. The trial Court, therefore, rejected the prayer for impleadment.

Being aggrieved by the order dated 16.1.2006 respondents Manik Roy and Ahilaya Jha filed a writ petition before the High Court which allowed the writ petition holding that the respondents' vendors were not parties to the suit and there was nobody to represent and safeguard their interest and therefore they are required to be added as parties in the suit for the ends of justice.

The High Court also noted that the trial Court had not considered the effect of the fact that the respondents' vendors are not parties to the suit and there was no representation of the writ petitioners and their vendors in the suit.

In support of the appeal, learned counsel for the appellant submitted that the effect of Section 52 of the T.P. Act has been completely lost sight of.

Learned counsel for the respondents on the other hand submitted that plaintiff Sanjay is none other than the son of late M.M. Sharma, who was an advocate who had appeared for defendant Rajeshwari Devi in a suit for specific performance which was decreed in favour of said Rajeshwari Devi on 23.12.1986. A few days thereafter taking advantage of the professional relationship between late Sh. M.M. Sharma, father of the appellant and Smt. Rajeshwari Devi, the agreements in question were executed. There has been a series of transactions and neither Rajeshwari Devi nor the vendors of the respondents had shown any interest in the dispute. That being so the interest of the respondents is likely to be prejudicially affected. Therefore, the High Court has rightly interfered in the manner. Strong reliance is placed on paragraph 9 of Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr. (2004(1) SCC 191).

Section 52 of the T.P. Act reads as follows:

"During the pendency in any court having authority within the limits of India of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

In Bibi Zubaida Khatoon's case (supra) on which learned counsel for respondents had placed reliance in fact goes against the stand of the respondents. Though a casual reading of paragraph 9 supports the stand taken by the respondents, it is to be noted that the factual position was entirely different. In fact a cross suit has been filed in the suit in that case. Respondents being transferees pendente lite without leave of the court cannot as of right seek impleadment in the suit

which was in the instant case pending for a very long time. In fact in para 10 of the judgment this Court has held that there is absolutely no rule that the transferee pendente lite without leave of the Court should in all cases contest the pending suit. In *Sarvinder Singh v. Dalip Singh and Ors.* (1996(5) SCC 539) it was observed in para 6 as follows:

"6. Section 52 of the Transfer of Property Act envisages that:

"During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of *lis pendens* by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."

In *Dhurandhar Prasad Singh v. Jai Prakash University and Others* (2001(6) SCC 534) it was noted as follows:

"7. Under Rule 10 Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, and yet, as pointed out by Their Lordships of the Judicial Committee in *Moti Lal v. Karrabuldin* (ILR (1898) 25 Cal 179) he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he

colluded with the adversary. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for, as Lord Kingsdown of the Judicial Committee said in Prannath Roy Chowdry v. Rookea Begum [(1857-60) 7 MIA 323], a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings."

The principles specified in Section 52 of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

Above being the position, the High Court's view is clearly indefensible and is set aside.

Learned counsel for the respondents submitted that since they are not parties in the suit, their interest will get jeopardized. It is a trite law that if a person is not a party to a suit, the decree does not affect him unless the judgment is in rem and not in personem.

Appeal deserves to be allowed which we direct, but without any order as to costs.