
(2020) 02 DEL CK 0088

Delhi High Court

Case No: First Appeal From Order (OS) No. 157 Of 2018

Jaswin Arora

APPELLANT

Vs

Harmeet Singh Sood &
Ors

RESPONDENT

Date of Decision: Feb. 4, 2020

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 39 Rule 1, Order 39 Rule 2, Order 1 Rule 10, Order 1 Rule 10(2)
- Specific Relief Act, 1963 - Section 19, 19(b)
- Transfer Property Act, 1882 - Section 52

Citation: (2020) 02 DEL CK 0088

Hon'ble Judges: Dr. S. Muralidhar, J; Talwant Singh, J

Bench: Division Bench

Advocate: Kunal Tandon, Niti Jain, Girdhar Singh, Rajshekhar Rao, Ravi Kapoor, Karthik Sundar, Rishav Ambastha, Umang Kapoor, Arti Bansal

Final Decision: Dismissed

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against two impugned interim orders of the learned Single Judge dated 13th September, 2018 in OA No.8 of 2018 in CS

(OS) 3056 of 2014 and I.A. No.19555 of 2014 in the same suit.

2. The Appellant is the Plaintiff in the aforesaid suit. He is seeking specific performance of an Agreement to Sell/Memorandum of Understanding

(Ã¢â¬ÅMoUÃ¢â¬Å) dated 19th May, 2012 and 22nd May, 2012 in respect of the basement (front and rear portion), ground floor and terrace along with the

proportionate rights of the property at No. D-16, Greater Kailash Enclave-I, New Delhi (hereafter, "the property in question") entered into

between him and Defendant Nos.1 and 2 in the suit who have been impleaded in the present appeal as Respondent Nos.1 and 2.

3. On 30th April 2014, the original owner of the property in question Mr. Joginder Kapoor (impleaded as Respondent No.4 herein) entered into an

Agreement to Sell (ATS) in respect of some portions of the suit property with Defendant/ Respondent Nos.1 and 2. It is the case of the Plaintiff that

the above ATS/MoU was entered into by the Plaintiff with Defendant Nos.1 and 2 as attorney of Defendant No.3.

4. The case of the Plaintiff is that since entering into the above MoU/ATS, Defendant No.4 Mr. Joginder Kapoor had unauthorizedly trespassed to the

rear half ground floor portion of the property in question. Defendant No.1 had applied for getting the leasehold property converted into freehold with

the office of the Delhi Development Authority ("DDA"), i.e. Defendant No.5 in the suit (Respondent No.5 herein).

5. The Plaintiff/Appellant filed CS (OS) 3056/2014 on 23rd September, 2014 seeking the above reliefs. Along with the suit he filed IA No.19555 of

2014 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ("CPC") for interim injunction. Notice on this application was

issued to the Respondents/Defendants on 9th October, 2014.

6. An interim order was passed on 9th October, 2014 by the learned Single Judge, restraining the Defendants/Respondents from selling, alienating,

transferring or parting with possession or creating any third-party rights and interests in the property in question.

7. On 5th May, 2016 Respondent Nos. 6 and 7 herein (Ms. Janki Devi and Ms. Sapna Yadav respectively) filed an application being I.A. No.6500 of

2016 under Order I Rule 10 CPC in which they claimed to have purchased the rear portion of the ground floor and rear portion of the lower ground

floor of the property in question from Respondent Nos.2 and 4 respectively, who had in turn allegedly purchased the rear ground floor portion from

Respondent No.1 (Mr. Harmeet Singh Sood). Respondent Nos.6 and 7 also claimed to be in possession of the property in question.

8. The case of Respondent Nos. 6 and 7 was that they were not aware of the interim order passed by the Court on 9th October, 2014 and that in the

meanwhile, on 20th October, 2014 two separate sale deeds were registered in favour of Respondent Nos. 6 and 7 in respect of the rear portion of the

ground floor and rear portion of the lower ground floor respectively of the property in question. They accordingly claimed that they were bona fide

third-party purchasers without the knowledge of the pendency of the suit or the stay order. They explained that on 23rd November, 2015, the learned

Single Judge permitted the Plaintiff to affix a signboard on the property in question, mentioning the fact of the pendency of the litigation. Pursuant

thereto, the signboard was fixed. According to Respondent Nos. 6 and 7, it is only then that they became aware of the pendency of the suit.

9. In their application it was mentioned that Defendant No. 4 Mr. Joginder Kapoor had already filed his written statement dated 23rd May, 2015 in the

suit wherein a preliminary objection was taken about his having already sold the rear portions of the ground and lower ground floor to Respondent

Nos.6 and 7 by a title document dated 25th September, 2014 and possession thereof had also been handed over to them. This was reiterated

elsewhere in the written statement as well. Respondent Nos.6 and 7 asserted that they were in physical possession of the respective portions of the

property in question. They prayed, in the aforementioned I.A. No.6500 of 2016 under Order I Rule 10 (2) of the CPC, that they should be impleaded

as Defendant Nos.6 and 7 in the suit. On 31st October, 2017, the Joint Registrar of this Court allowed the impleadment of Respondent Nos.6 and 7.

10. Aggrieved by the above order, the Plaintiff/Appellant herein, filed OA No.8 of 2018. By the first impugned order dated 13th September, 2018 the

learned Single Judge dismissed the said appeal, aggrieved by which the present appeal has been filed by the Plaintiff.

11. The learned Single after examining the decisions in *Kasturi v. Iyyamperumal* (2005) 6 SCC 733, *Vidhur Impex and Traders Private Limited v.*

Tosh Apartments Private Limited (2012) 8 SCC 384 and *Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited* (2013) 5

SCC 397, as well as the decisions of this Court in *Charanjeet Singh Rekhi v. Harish Ahuja* (2014) 7 High Court Cases (Del) 83, and *Dharampal*

Satyapal Ltd. v. Sanmati Trading and Investment Ltd. ILR (2014) 2 Del 120 4 held that in the present case both the Plaintiff and the proposed

Applicants i.e. Respondent Nos.6 and 7 derived title from the same persons i.e. Defendant Nos.1 and 2. Thus, the parties claim rights through the

same vendor and some portions of the property in question were overlapping between the two transactions. It was held by the learned Single Judge as

under:

“14. The court is not at this stage adjudicating the actual portions purchased by both sets of parties. However, if any decree is passed against

Defendants No. 1 and 2, who are now ex-parte, since the proposed Applicants claim through the said Defendants, the judgment and decree would be

binding on them. The final order which would be passed would undoubtedly affect the rights of the proposed-applicants in respect of the overlapping

portions of the suit property. Such parties would then be necessary parties as also proper parties to the suit. In the present case, the agreement to sell

between the proposed Applicants -and Defendant No. 4 was executed two days prior to the filing of the suit i.e. 25th September, 2014. Thus, the

transaction was not in violation of the restraint order passed by this Court, though the sale deed was executed thereafter. In fact, as of 20th October,

2014, when the sale deeds were executed, it is not even clear whether Defendants No.1, 2 and 4 were even served with the, summons in the suit. In

fact, the service report of 19th February, 2015 records that Defendants No. 1, 2 and 4 are un-served. This completely changes the character of the

sale in favour of the proposed Applicant. The sale cannot be characterized as being clandestine or a result of contumacious conduct. The order passed

by the Joint Registrar cannot thus be faulted with.

12. By the following separate order on the same date the learned Single Judge, which too has been challenged in this appeal, disposed of I.A.

No.19555 of 2014 under Order XXXIX Rules 1 and 2 of the CPC:

“4. Learned counsel for the Defendant Nos.6 & 7, who are now in possession of the property and who acquired title from the Defendant No.4,

who in turn is claimed to have acquired title from the Defendant Nos.1 & 2, fairly submits that his clients will not create any third-party interest and

shall maintain the status quo with respect to title and possession. However, he submits that the Plaintiff has put up a board outside the property, which

is causing inconvenience to his clients. Since the Defendant Nos.6 & 7 have agreed to be bound by the interim order to not create any third-party

interest, there is no requirement of having board on the property. The board is directed to be removed within four weeks. I.A. is disposed of in the

above terms.

13. This Court has heard the submissions of Mr. Kunal Tandon, learned counsel appearing for the Appellant and Mr. Rajshekhar Rao, learned counsel

appearing for the Respondents/Defendant Nos.6 and 7.

14. The Court would first like to deal with the issue whether impleading the third-party purchasers, thereby changing the character of the suit for

specific performance, would be considered to be a legal error warranting interference?

15. Mr. Tandon referred repeatedly to Section 19 of the Specific Relief Act, 1963 (SPA) and in particular to clause (b) to urge that there was

no occasion for the learned Single Judge to have allowed the application by Respondents No.6 and 7 for impleadment. Section 19 of the SPA reads as

under:

“19. Relief against parties and persons claiming under them by subsequent title.

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good

faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership,

the new limited liability partnership which arises out of the amalgamation.

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out

of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is

warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

16.1 The above clause came up for consideration in Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited (supra). In that

case, Nanak Builders and Investors Private Limited (NBIL) filed a suit for specific performance against the Defendant i.e. the Sawhneys

for specific performance on agreement to sell. In the said suit, the Sawhneys undertook/stated that till the disposal of the suit, the property in question

in that case would not be transferred or alienated.

16.2 During the pendency of the suit, five sale deeds were executed by the Sawhneys in favour of the Appellant, Thomson Press India Limited

(TPIL). On the basis of those sale deeds, TPIL filed an application under Order I Rule 10 CPC for impleadment as co-Defendant. It was not

in dispute that prior to the institution of the suit for specific performance, NBIL got a notice published in the newspaper regarding its Agreement to

Sell with the Sawhneys.

16.3 The Single Judge of this Court dismissed the application on the ground that the sale in favour of the TPIL itself was in violation of the undertaking

given by the Sawhneys which was in the nature of an injunction. After the Division Bench affirmed the order of the Single Judge, TPIL appealed to

the Supreme Court.

16.4 The contention of TPIL inter alia was that where a subsequent purchaser has purchased a suit property and is deriving its title through the same

vendor, then he would be a necessary party provided it has purchased it with or without notice of the prior contract.

16.5 In interpreting Section 19 (b) of the SPA, the Supreme Court referred to its earlier decision in Vidur Impex and Traders Private Limited v. Tosh

Apartments Private Limited (supra) where after taking note of all earlier decisions, the Court laid down the following broad principles governing the

disposal of an application for impleadment:

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern

disposal of an application for impleadment are:

41.1 The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as

party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete

adjudication of the issues involved in the Suit.

41.2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the

Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and

issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

41.5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

16.6 The Supreme Court in Thomson Press India Limited (supra) also discussed Section 52 of the Transfer Property Act, 1882 (TPA), which governs the doctrine of lis pendens and observed that it “does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation”.

16.7 The Supreme Court, next, in Thomson Press India Limited (supra) examined Order I Rule 10 of the CPC and observed that “it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party, whose presence in the Court is essential for effective determination of the issues involved in the suit”.

16.8 On the facts of that case, the Supreme Court in Thomson Press India Limited (supra) came to the conclusion that TPIL had entered into a clandestine transaction with the Sawhney & Co and got the property transferred in their favour and therefore TPIL could not be held to be a bonafide purchaser without notice.

16.9 Nevertheless, the Supreme Court noticed the status of a person, who claims title under the Defendant, acquired subsequent to the contract. It

was obvious that the subsequent purchaser was subject to the rider provided under Section 52 of the TPA and the restraint order passed by the Court.

The Supreme Court in Thomson Press India Limited (supra), then discussed the decision of the Calcutta High Court in *Kafiladdin v. Samiraddin* AIR

1931 Cal 67 and in particular to the following observations of the Supreme Court in *Durga Prasad v. Deep Chand* AIR 1954 SC 75:

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the

subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants

made between plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in

Kafiladdin v. Samiraddin, AIR 1931 Cal 67 (C) and appears to be the English practice. See Fry on Specific Performance, 6th Ed. Page 90, paragraph

207; also *Potter v. Sanders* (1846) 67 ER. We direct accordingly.

16.10 In the above circumstances the Supreme Court in Thomson Press India Limited (supra) concluded as under:

“Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to

be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

17. In the present case, in response to the application of Respondents/Defendants 6 and 7 under Order I Rule 10 of the CPC, the stand taken by the

Appellant reads as under:

“That the application as has been filed by the applicants is otherwise also not maintainable in as-much as the applicants had not shown any due

diligence while dealing with the seller, Mr. Joginder Kapoor, while allegedly purchasing the property in question. Rather, the applicants in order to

delay and defeat the right and claim of the plaintiff in respect of the property in question, which the plaintiff has been seeking vide the instant suit, the

applicants had conspired with the seller and had bought the property for a meagre amount of Rs. 1,12,00,000/- whereas the value of the said property

is Rs.4,00,00,000/- which clearly goes to show that the applicants have allegedly get the property assigned in their name in collusion and connivance

with the seller. Hence the application is liable to be dismissed with heavy costs on this score alone.

18. In view of the above stand, the ratio of Thomson Press India Limited (supra) would squarely apply in the case of the Petitioner. This is also

consistent with the law explained by the Supreme Court in Vidur Impex and Traders Private Ltd. v. Tosh Apartments Private Ltd. (supra).

19.1 Learned counsel for the Appellant placed considerable reliance on the decision in Kasturi v. Iyyamperumal (supra) to urge that the Plaintiff in a

suit for specific performance is dominus litis and cannot be forced to add parties against whom he does not want to fight.

19.2 The relevant passage of the said decision on which reliance was placed reads as under:

“17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of

the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of

law, as already discussed above.” (emphasis supplied)

19.3 The part of the sentence that requires to be noticed is that the Plaintiff cannot be forced to add parties against whom he does not want to fight

“unless it is a compulsion of the rule of law.”

20. In the facts of the present case, by not impleading Respondents No.6 and 7 at this stage, there would inevitably be a multiplicity of litigation. The

Court considers it to be necessary and consistent with the rule of law that the impleadment of Respondents Nos. 6 and 7 as co-Defendants in the suit

ought to be allowed. Otherwise all that the Appellant/Plaintiff would have even if he succeeds in the suit would be a paper decree which cannot be

executed and which when put in execution would give rise to a fresh round of litigation at the instance of Respondent Nos.6 and 7 with no real benefit

to the Plaintiff. It will be open to the Plaintiff to appropriately modify the pleadings in the plaint as well as the prayers in light of the impleadment of

Respondents Nos.6 and 7 as co-defendants in the suit.

21. For the aforementioned reasons, the Court finds no reason to interfere with the impugned judgment of the learned Single Judge, as far as the

impleadment of Respondent Nos.6 and 7 as co-Defendants is concerned.

22. Now turning to the second part of the order where the earlier order for placing a board in the property in question has been withdrawn by the

learned Single Judge, this Court notes that there is a clear undertaking by Respondents/Defendants Nos.6 and 7, as recorded in the impugned order

that they "will not create any third party interest and shall maintain the status-quo with respect to title and possession". Further, it will always be

open to the Plaintiff to seek to enforce that undertaking in the event that there is any attempt to alienate the property in question during the pendency

of the suit. The Court is of the view that this is sufficient protection to the Plaintiff and there is indeed no requirement for any board to be placed in the

property in question announcing that there is litigation concerning the said property pending in the Court. Consequently, even this part of the order does

not call for interference.

23. The appeal is dismissed but in the circumstances, with no order as to costs.