

(2012) 05 DEL CK 0663

Delhi High Court**Case No:** I.A. No. 3563 of 2012 and I.A. No.3564 of 2012 in CS (OS) No.219 of 1984

M/S Shringar Impex Pvt. Ltd.

APPELLANT

Vs

MS. Punita Singh

RESPONDENT

Date of Decision: May 25, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 20 Rule 18

Citation: (2012) 190 DLT 400**Hon'ble Judges:** Manmohan Singh, J**Bench:** Single Bench

Advocate: Mohit Gupta, with Ms Neha Jain and Ms Megha Gaur and Mr. Rajiv Bansal, with Mr Ajay Jha, Mr. Nishant Choudhary, Ms. Sarabjot Walia and Mr. G. Sharma, in I.A. No. 3563-3564/2012, for the Appellant; Jasmeet Singh, with Mr Saurabh Tiwari, for the Respondent

Judgement

Manmohan Singh, J.

By this order, I propose to decide two applications, filed by the applicant M/s Nouveaw Exports Pvt. Ltd., Mumbai, the details of which are as under:

1. I.A. No.3563/2012, for stay of the proceedings.
2. I.A. No.3564/2012, under Order 1, Rule 10 CPC, for impleadment as a co-defendant.

Both the above mentioned applications were strongly opposed by the defendant, mainly on the grounds that the applicant is neither a proper nor a necessary party in the present suit and cannot be permitted to be impleaded as a party to the present suit. In the other application for stay of the proceedings, it was stated that the said application is a gross misuse and abuse of process of law and the applications if allowed will further delay in passing a final decree of partition in the suit which is more than 28 years old.

2. Firstly, I shall take up the application filed by the applicant, namely, M/s. Nouveaw Exports Pvt. Ltd., under Order 1 Rule 10 CPC for being impleaded as a co-defendant as the order passed in this application shall have bearing in the other connected application. The case of the applicant is that originally suit was filed by plaintiff Ms Punita Singh against her sister Manjula Singh /defendant seeking partition of suit properties, namely, plot situated at 29 Block, 171, Sunder Nagar, New Delhi, and the land at Khasra No.1257/1244 bearing No.79, Jeevan Nagar, Kilokari. Similarly, another suit was filed by Ms Manjula Singh against Ms Punita Singh for the same relief in respect of same two properties. Both the suits were clubbed by order dated 05.11.1985. Preliminary decree was passed on 05.11.1985 in the present suit holding both the plaintiff and defendant as half shares in both the properties. A Local Commissioner was appointed to suggest means to partition Sunder Nagar property. The property at Sunder Nagar was sold in public auction on 04.08.1986 to the highest bidder and the sale certificate was also issued in October, 1986 in favour of auction purchaser. Thereafter, the suit came up before Court on 22.03.2010 when I.A. No.3596/2012 under Order XX, Rule 18 CPC was listed for passing a final decree after revival of the suit. The matter was adjourned to 23.04.2010. It is also a matter of record that when the suit was listed on 27.09.2011, Mr Subodh S. Mahale, Architect, was appointed as a Local Commissioner directing him to visit the property bearing No.79, Jeevan Nagar, Kilokari, New Delhi, and after taking measurements make a site plan. The learned counsel for the parties made a statement before the Court that the division of the said property was not possible in view of the fact that the property was tenanted. It was agreed by the parties that the property be sub-divided horizontally. Therefore, the Local Commissioner was appointed to give his report. The said report has been filed by the Local Commissioner. After filing of the said report and before passing a final decree, the present application has been filed by the applicant.

3. The contention of the applicant is that both Ms Punita Singh and Ms Manjula Singh approached the applicant in the year 2000 for selling the suit property No.79 in Khasra no.1297/1244 situated at Jeevan Nagar, Kilokari, New Delhi. They represented that the suit property originally was owned by their mother Mrs Prakash Singh, who died on 09.06.1954, leaving behind her husband, Sh. Harikishan Singh, and two daughters, as her legal heirs. Her husband, Sharkishan Singh, vide his letter dated 05.08.1959, addressed to Tehsildar, Mehrauli, Delhi, conveyed his no objection to transfer the property in the name of his two daughters and the year 1959, the said property was transferred accordingly. Therefore, they became absolute lawful owner of the said undivided property. In 1961, both Punita Singh and Manjula Singh inducted a tenant, i.e., Gammon india Limited, in the suit property, thereby creating tenancy rights in the said property, who is having possession of the same as a tenant.

4. The applicant agreed to buy the said property for a total consideration of Rs.48 lac. The agreement to sell was executed between the applicant, Manjula Singh and

Punita Singh on 20.10.2000. By virtue of the said agreement, Rs. 4 lac was paid as advance amount to both by way of cheques. Admittedly, at the instance of applicant, Ms Manjula Singh in compliance with agreement dated 20.10.2000 has sold her undivided share in the suit property to M/s. Shringar Impex Pvt. Ltd., vide registered Sale Deed dated August, 2010 and the present applicant has acted as a confirming party and power of attorney was also executed by M/s. Shringar Impex Pvt. Ltd. The applicant has filed the copy of the sale deed. The case of the applicant is that since Punita Singh was not coming forward to perform her obligations, the applicant was constrained to file Suit No.2289/2011 before Bombay High Court for specific performance of the said property against her as well as M/s. Shringar Impex Private Ltd. The Bombay High Court passed an interim order in terms of prayer (a) in notice of motion No.2765/2011 in Suit No.2289/2011 vide order dated 05.10.2011. The said order is re-produced as under:

pending the hearing and final disposal of this suit, the defendant No.1, her associates, attorneys and agents etc. be restrained from assigning, transferring, alienating, creating any encumbrances as well as creating any third party interest in her share of suit property and hand over the possession of the same to any other person/persons in any manner of property no.79, Jeevan Nagar, Kilokari, New Delhi admeasuring around 4000 sq.mtr out of which defendant half share stands at 2000 sq. metrs.

5. The learned counsel for the applicant has also informed the Court that the said interim order passed by the Bombay High Court has been made absolute as no one appeared on behalf of Punita Singh.

6. Therefore, the contention of the applicant is that the applicant be impleaded as a proper and necessary party to this suit as any further order passed in the present suit would affect the rights of the applicant and Punita Singh has no locus standi to continue with the present suit in view of the fact that she had entered into an agreement in respect of the suit property with the applicant subsequently to filing of the present suit. It is also stated that the factum of the said agreement has been suppressed by Punita Singh. The following prayer has been made by the applicant:

(a) implead the applicant namely M/s. Nouveaw Exports Pvt. Ltd. R/o. A/302, Vaishali, Near Teachers Colony, Aliyavar Jung Marg, Bandra (East), Mumbai - 400 051 as defendant No.2 in CS(OS) No.208 of 1983 titled as Miss. Punita Singh Vs. Ms. Manjula Singh pending before this Hon"ble Court.

7. Mr Jasmeet Singh, learned counsel appearing on behalf of Ms Punita Singh, has strongly opposed the prayer of the application. According to him, the application is an abuse of process of law as the applicant is neither a proper nor a necessary party in the suit and therefore, the applicant cannot be impleaded as a party.

8. Admittedly, the subject matter of the suit is partition of the suit property. The preliminary decree was passed on 05.11.1985. Vide order dated 27.09.2011, the

Local Commissioner was appointed to inspect the suit property and to give his report. The report is already on record and the matter was listed from time to time for passing a final decree. Learned counsel for Ms. Punita Singh submits that his client would contest the suit before Bombay High Court on merit by raising her defence in accordance with law. However, he admits that in case the suit filed by the applicant for specific performance is finally decided in favour of the applicant, no doubt, he would be entitled to enforce the decree passed on the basis of agreement dated 20.10.2000 for which his client would have no objection. He submits that the applicant is not a necessary party in the suit for partition and the same is fixed for passing a final decree in view of the order passed by this Court on 27.09.2011. But in the meantime, these false and frivolous applications are filed.

9. It is settled law that in order to implead a necessary party to the suit, the applicant must show:

(i) There must be some right to relief against such party in respect of controversies involved in the proceedings.

(ii) No effective decree can be passed in his absence.

10. The Supreme Court in the case of [Kasturi Vs. Iyyamperumal and Others](#), has held as under:

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos. 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinbefore, the respondent Nos. 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

11. In another case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.; AIR 2010 SC 3109, the Supreme Court held:

5. In pursuance of the lease of the airport in its favour, the appellant claims to have undertaken several developmental activities to make it a world class airport. The appellant alleges that it was expecting that the litigation initiated by the first respondent would end and it would be able to get the said 31,000 sq.m. land also as it was in dire need of land for developing the airport. According to the appellant, the Mumbai airport is surrounded by developed (constructed) areas with very limited opportunities to acquire any land and the site constraints limit the possibilities for development and therefore it was necessary to make optimum use of the existing land in the airport for the purpose of modernisation and upgradation; and therefore, the disputed land which was lying idle, was required for modernisation. It therefore filed an application seeking impleadment as an additional defendant in the pending suit filed by the first respondent against AAI, contending that its interest was likely to be directly affected if any relief is granted to the first respondent-plaintiff in the suit. The appellant alleged that the Information Memorandum proposing to privatise the management did not exclude the area which was the subject-matter of the suit; and that the suit plot could not however be leased to the appellant in view of the interim order in the pending suit of the first respondent. The appellant therefore claimed that it had, or would have, an interest in the suit land; and at all events, it was interested in acquiring it by lease depending upon the decision in the suit and therefore it was a necessary party and in any event a proper party.

8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of CPC ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.

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 not 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 question 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. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

12. After having considered the facts and circumstances of the present case well as the decisions referred to above, I am of the considered view that present application filed by the applicant, M/s Nouveaw Exports Pvt. Ltd., is not maintainable as the applicant is neither a proper nor a necessary party in the present suit and applicant cannot be permitted to be impleaded in the present case, which is a suit for partition pending since 1984, wherein a final decree is awaited on the basis of report submitted by the Local Commissioner.

13. Further, no prejudice would be caused to the applicant in case the application is not allowed by this Court as it is admitted position between the parties that in case the applicant would succeed before the Bombay High Court in its suit for specific performance to enforce the agreement arrived at between the applicant and Punita Singh, it would be entitled for the share of Punita Singh, coupled with the fact that the Bombay High Court has already passed an interim order in favour of the applicant thereby restraining Punita Singh from assigning, transferring, alienating, creating any encumbrances as well as creating any third party interest in her share of suit property. The said order has been confirmed during the pendency of the suit. Further, the learned counsel, appearing on behalf Punita Singh, has made a statement that in case, after defending the suit by her client before the Bombay High Court, ultimately the prayer sought by the applicant is granted by the Bombay High Court, her client will have no option but to comply the terms of the agreement dated 20.10.2000.

14. Under these circumstances, I.A. No.3564/2012 is dismissed. In view of the dismissal of I.A. No.3564/2012, I.A. No.3563/2012 has become infructuous and the same is dismissed.

The plaintiff has filed an affidavit with respect to the report filed by the Local Commissioner. List on 16.07.2012.