SAVITRI DEVI

v.

DISTRICT JUDGE, GORAKHPUR AND ORS.

FEBRUARY 18, 1999

[DR. A.S. ANAND, CJ., M. SRINIVASAN AND S.N. PHUKAN, JJ.]

Code of Civil procedure 1908, O.1 R. 10 r/w s.151—Necessary and proper parties to suit—Appellant-plaintiff filing suit for maintenance—By consent interim order passed restraining her sons from alienating suit property—Thereafter first defendant selling one fourth suit property each to respondents 3 to 5—Respondents 3 to 5 applying to get impleaded as parties to suit—Plaintiff resisting impleadment on ground that sales were in violation of court order and therefore void—Trial Judge allowing application—District Court and High Court affirming order and holding Respondents 3 to 5 were necessary and proper parties to suit—Held, on facts, to avoid multiplicity of proceedings, impleadment of respondents 3 to 5 was warranted.

The appellant plaintiff filed a civil suit against her four sons for a decree of maintenance and for creation of a charge over the ancestral property of the family. By consent of parties, civil court passed an interim order directing parties not to transfer the suit property in favour of any person till disposal of the suit.

Thereafter the first defendant sold one fourth share of three parcels of land comprising the suit property each to Respondents 3 to 5 by registered sale deeds. Respondents 3 to 5 then applied to the civil court for being impleaded as parties to the suit. The plaintiff resisted this on the ground that the sales were in breach of the order of injunction and that the transferees got no valid title to the suit properties. The trial court allowed the application of Respondents 3 to 5 and directed them to be impleaded as parties to the suit. The District Court in revision and the High Court in a further writ petition filed by the appellant upheld the order of the trial court.

Dismissing the appeal, this Court

HELD : Respondents 3 to 5 were necessary and proper parties to the suit and their impleadment was warranted. Avoidance of multiplicity of

proceedings was one of the objects of order I Rule 10 CPC and if the application for impleadment was thrown out Respondents 3 to 5 would certainly come up with a separate suit to enforce their alleged rights.

[728-G]

Khemchand Shankar Choudhari **v.** *Vishnu Hari Patil,* **[1983] 1 SCC 18;** *Ramesh Hirachand Kundanmal* **v.** *Municipal Corporation of Greater Bombay,* **[1992] 2 SCC 524;** *Razia Begum* **v.** *Anwar Begum,* **[1959] SCR 1111 and** *Surjit Singh* **v.** *Harbans Singh,* **[1995] 6 SCC 50, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 932 of 1999.

From the Judgment and Order dated 29.9.97 of the Allahabad High Court in C.M.W.P. No. 33123 of 1997.

Rajesh Tyagi and Praveen Jain for the Appellant.

B.L. Yadav and Ms. Sandhya Goswami for the Respondents Nos. 3-5.

The Judgment of the Court was delivered by

SRINIVASAN, J. Leave granted.

2. The appellant has filed a civil suit bearing No. 1586/92 in the Court of Munsif, Gorakhpur against her four sons for a decree for maintenance and for creation of a charge over the ancestral property of the family. The suit was filed on 14.8.92 and was fixed for hearing on 31.8.92. She applied for an interim order of injunction restraining her sons from alienating the suit property during the pendency of the suit. But on 18.8.92, a Vakalat was filed on behalf of the defendants and 4th defendant also filed an affidavit in the Court purporting to be on behalf of the defendants. The counsel appearing for the parties expressed their consent before the Court that during the pendency of the case the parties could be directed not to sell the suit property to any third person. In the light of the consent of the counsel, the Court passed an order on that date directing the parties not to transfer the disputed property described in the plaint in favour of any other person till the final disposal of the suit.

3. On 19.8.1992 the first defendant sold his 1/4th share in one of the lands to the third respondent and 1/4th share in another land to the 4th respondent. On 27.8.92 he sold 1/4th share in yet another land to the 5th

respondent. All the three sales were by registered sale deeds. On 1.1.93 respondents 3 to 5 filed an application before the trial Court under Order 1, Rule 10 and Section 151 C.P.C. for impleading them as parties to the suit. In the application they had stated that the first defendant had received sale consideration before executing the sale deeds and handed over possession of the subject-matter of the sale deeds to them. It was also alleged that the plaintiff and the defendants had colluded together in order to cause loss to them. That application was opposed by the appellant. In the statement of objections, it was stated that the sales were in breach, contempt and disregard of the order of injunction passed by the Court and the transferees under such sales got no title to the property in order to get impleaded as parties to the suit.

4. The trial Court passed a detailed order on 14.7.97 granting the application of respondents 3 to 5 and directed the plaintiff to implead them as defendants in the suit. In the order of the trial court reference has been made to an application filed by the first defendant to the effect that he was not earlier aware of the case and the 4th defendant had forged his signature and filed a bogus vakalatnama. He had also alleged that the order of injunction was obtained fraudulently on 18.8.92. The trial court has also referred to an application under Section 340 Cr. P.C. filed by the first, defendant and observed that the same had been dismissed by order dated 20.12.92. There is also a reference in the order of the trial court to a proceeding in the High Court filed by the plaintiff for quashing orders dated 10.11.95 and 19.4.96 passed in the suit and a miscellaneous civil appeal arising from the suit wherein respondents 3 to 5 had been impleaded as parties. It is seen from the order of the trial court that certain proceedings under Order XXXIX Rule 2A C.P.C. concerning the question of attachment of the properties sold were also pending. It is only after taking note of all those facts, the trial court allowed the application of respondents 3 to 5 to implead them as parties to the suit.

5. A revision by the plaintiff in the Court of District Judge, Gorakhpur suffered a dismissal though the District Judge passed certain strictures against the conduct of the first defendant on the assumption that he had knowledge of the order of injunction dated 18.8.92. However, the District Judge proceeded on the Footing that respondents 3 to 5 who were third parties had no knowledge of the proceedings in the Court.

A 6. The said order of the District Judge was challenged in writ petition by the appellant in the High Court. By order dated 29.9.97, the High Court dismissed the same refusing to accept the contention of the appellant that respondents 3 to 5 were not proper and necessary parties. The High Court also observed that the Court below had power even *suo moto* to implead B a person whom it considered as proper and necessary party.

7. The order of the High Court is under challenge in this appeal. It is vehemently argued by learned counsel for the appellant that the sales in favour of respondents 3 to 5 are *non est* in the eye of law and could not convey any interest to the purchasers as they were executed in violation of C the court order restraining the defendants from alienating the suit property till the disposal of the suit. Strong reliance has been placed upon the ruling in *Surjit Singh and Others* v. *Harbans Singh and Others*, [1995] 6 S.C.C. 50, It is submitted that if a person who purchases the property during the pendency of the suit is allowed to get impleaded in the suit, there will be D no end to such impleadment as the parties will indulge in further transfers of the suit property and the plaintiff as '*dominus litis*' cannot be made to fight against such persons indefinitely and endlessly.

8. The facts set out by us in the earlier paragraphs are sufficient to E show that there is a dispute as to whether the first defendant in the suit was party to the order of injunction made by the Court on 18.8.92. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of F the order of the Court. The plea raised by respondents 3 to 5 that they were *bona fide* transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by respondents 3 to 5 for G impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means multiplicity of proceedings. In such circumstances, it cannot be said that respondents 3 to 5 are neither necessary nor H proper parties to the suit.

9. Order I, Rule 10 C.P.C. enables the Court to add any person as 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 multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In *Khemchand Shankar Choudhari and Another* v. *Vishnu Hari Patil and Others,* [1983] 1 S.C.C. 18 this Court held that a transferee *pendente lite* of an interest in an immovable property which is the subject matter of suit is a representative in 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 as well as the provisions of Rule 10 of Order XXII C.P.C. The Court said:

> "...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 Corporation of Greater Bombay and Others*, [1992] 2 S.C.C. 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:

> "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

A 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."

The Court also observed that though prevention of actions cannot be said to be main object of the rule, it is a desirable consequence of the rule. The B test for impleading parties prescribed in *Razia Begum* v. *Anwar Begum*, [1959] S.C.R. 1111 that the person concerned must be having a direct interest in the action was reiterated by the Bench.

12. In *Surjit Singh and Others* v. *Harbans Singh and Others*, [1995] 6 C S.C.C. 50 which is relied on by the appellant, a preliminary decree was passed relating to immovable property in favour of the appellants. While proceedings for passing a final decree was pending, the parties moved for accounting and preservation of mesne profits. The trial court passed an order restraining all parties from alienating or otherwise transferring in any D manner any part of the property involved in the suit. Nearly two years thereafter, one of the sharers assigned his rights under the preliminary decree by a registered deed partly in favour of the wife of his lawyer and partly in favour of others in the teeth of the restraint order passed by the Court. On the basis of the assignment deed, the assignees made an application under Order XXII, Rule 10 C.P.C. for impleadment as parties to the E final decree proceedings. It was contended on their behalf that assignment of decree was different from alienation of property and the same was not prohibited by the order of injunction. The application for impleadment was allowed by the trial court and the appeal filed by the plaintiffs was dismissed by the Additional District Judge. The High Court dismissed their F revision and the matter came to this Court. There was no dispute in that case that the assignors and the assignees had knowledge of the order of the injunction passed by the Court. On those facts, this Court held that the deed of assignment was not capable of conveying any right to the assignees and the order of impleadment of the assignees as parties was unsustainable. Consequently, the appeal was allowed. The relevant passage in the judg- G ment reads thus:

"As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. H His right to property to that extent stood established. A decree

relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is *per se* property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property *per se* had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court in these circumstances has the duty as also the right to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of *lis pendens* are altogether on a different footing. We do not propose to examine their involvement presently. All that is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit."

13. The said ruling has no application whatever in the present case. As stated earlier, on the facts of this case, the impleadment of respondents 3 to 5 as parties to the suit was warranted. We do not find any justification to interfere with the orders of the Courts below. The appeal fails and is hereby dismissed. There will be no order as to costs.

14. Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave

A Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitu-
B tion of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly depricating such a practice.

S.M. Appeal dismissed.