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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1455/2005**

**VIRENDER SAHLOT**

..... Plaintiff

Through: Mr. Abhay P. Singh and Mr.  
Shantnu Aggarwal, Advocates  
appeared physically

versus

**GURVIR INDER SINGH AND ANR**

..... Defendants

Through: Mr. G.S. Raghav, Advocate for  
Defendant no.1 appeared  
physically  
Mr. S.C. Rana, Advocate for  
Defendant no.2 appeared  
physically  
Mr. Dilip Kumar, Advocate for  
applicant in IA No. 1245/2021  
appeared physically

**CORAM:**

**JOINT REGISTRAR (JUDICIAL) MS. TYAGITA SINGH,  
(DHJS)**

**ORDER**

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**24.08.2022**

*Matter is taken up through physical hearing as well as video conferencing.*

**IA No. 1245/2021 (application u/O I Rule 10 r/w Section 151 CPC  
on behalf of Mr. Darshan Gandhi for impleadment)**

CS(OS) 1455/2005

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### **Brief Facts & Arguments of Applicant and Parties**

1. This application has been filed by the applicant/intervener Sh. Darshan Gandhi u/O I Rule 10 CPC for his impleadment as necessary and proper party to the suit. The applicant has stated that the plaintiff has filed the suit for specific performance u/S 10 of Specific Relief Act on the basis of Memorandum of Understanding (MoU) dated 13.09.2005 which was amended vide Amended Memorandum of Understanding (MoU) dated 28.03.2006 in respect of the suit property, i.e. half portion of the undivided property No. B-21, West End, Diplomatic Enclave Extension, New Delhi-110021, ad-measuring 800 Sq. yards.
2. The applicant has stated that during the pendency of the suit, both defendants entered into Memorandum of Understanding (MoU) dated 11.03.2010 in respect of the above said property with the Applicant for sale consideration of Rs. 14 crores, out of which Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakhs only) was paid by part payments by the Applicant to the Defendants from 22.02.2010 till 22.12.2012, as per details mentioned in para no. 7 of the application.



3. The applicant has himself stated in the application that the defendants had mentioned in the MoU dated 11.03.2010 that the suit is pending between the plaintiff and defendants in respect of the abovesaid property and the Hon'ble Delhi High Court has directed the parties to maintain 'status quo', but the defendants represented to the Applicant that they would initiate appropriate proceedings before the Hon'ble Delhi High Court for vacation of the 'status quo' order immediately after execution of the MoU dated 11.03.2010.
4. The applicant has further stated in the application that the balance payment of Rs. 13,70,00,000/- (Rupees Thirteen Crores Seventy Lakhs only) was to be made by the Applicant to the defendants on or before 31.07.2010 and simultaneously, vacant physical possession of the share of the defendants in the abovesaid property was to be transferred to the Applicant by the defendants.
5. The applicant has further stated that there were various litigations inter-se between the defendants and their mother and sisters, but after the death of their mother, defendants clandestinely entered into settlement/ compromise with their sisters in partition suit CS DJ No. 610983/2016, which was disposed off by the final judgment/decreed dated 06.10.2020 by the Court of learned ADJ-06 (Central), Tis Hazari Courts, Delhi, on the basis of settlement between the parties.



6. The applicant has alleged that in various meetings and telephonic communications between the applicant, plaintiff and defendants, they had agreed to settle the matter in favour of the applicant, but now, they have threatened that they are in process of completing the transaction in terms of the Amended MoU dated 28.03.2006. The applicant has stated that he will suffer irreparable loss and injury which cannot be compensated in terms of the money, if he is not impleaded in this case as necessary and proper party.
7. On the other hand, plaintiff as well as defendants have strongly opposed the application in their respective replies. The plaintiff has denied that there were any telephonic communications between the applicant and plaintiff to settle the matter in favour of the applicant. The plaintiff has categorically denied that the Applicant is necessary and proper party to the suit.
8. Similarly, defendants in their reply have also denied that the applicant is necessary and proper party to the suit. However, defendants have not denied the MoU dated 11.03.2010 executed between the applicant and defendants, or receipt of part payment as mentioned in the application.
9. During the oral arguments, learned counsel for the applicant vehemently argued that the applicant shall be impleaded as necessary and proper party to the suit, as rights of the Applicant will suffer, if he is not impleaded as party to the suit. Learned



counsel for the Applicant argued that the defendants had cheated the applicant by not settling the matter in favour of applicant despite the execution of MoU dated 11.03.2010 and despite encashment of the part payment amounting to Rs. 1.90 Crores.

10. On the other hand, learned counsel for defendants vehemently argued that the applicant is not necessary and proper party to the suit even as per bare provisions of Order 1 Rule 10 CPC.
11. Learned counsels for the plaintiff and defendants argued that whether it is taken from the date of execution of MoU dated 11.03.2010, or from the date of alleged last payment dated 22.12.2012 as mentioned in para 7 of the application, the cause of applicant has become time- barred and the applicant is not entitled to pursue his cause in any legal proceedings.
12. Both the parties have alleged that this is the suit of plaintiff and plaintiff is dominus-litis and he cannot be forced to make the applicant as defendant in the suit, more so when the plaintiff has not claimed any relief against the Applicant. Learned counsel for the plaintiff has relied upon the following judgments in support of his arguments:-

(i) Kasturi vs. Iyyamperumal And Others (Hon'ble Supreme Court of India) (Full Bench) (2005) 6 SCC 733.

(ii) Bhim Singh Vs. Amar Nath and Ors. (Hon'ble Delhi High Court) MANU/DE/0506/2008.



(iii) K.B. Gupta and Ors. vs. Harbhajan Singh and Ors.  
(Hon'ble Delhi High Court) MANU/DE/1782/2016

(iv) Mumbai International Airport Pvt. Ltd. vs. Regency  
Convention Centre and Hotels Pvt. Ltd. and Ors. (Hon'ble  
Supreme Court of India) (DB) MANU/SC/0427/2010.

13. Learned counsel for defendants has relied upon the following  
judgments in support of his arguments:-

(i) Suraj Lamp and Industries Pvt. Ltd. Vs. State of  
Haryana and Another (2012) 1 SCC 656.

(ii) Vidur Impex and Traders Pvt. Ltd. and Others Vs.  
Tosh Apartments Pvt. Ltd. and Ors. AND Bhagwati  
Developers Pvt. Ltd. vs. Tosh Apartments Pvt. Ltd. and  
Others (2012) 8 SCC 384.

### **Reasons for Decision**

14. I have carefully perused the application as well as reply of  
opposite parties.

15. In the present case, the Hon'ble Court vide order dated  
20.10.2005 had directed the parties to maintain the status quo in  
respect of the suit property. Despite the 'status quo' order, the  
defendants entered into Memorandum of Understanding with  
Applicant and this fact about 'status quo' order was clearly



mentioned in the Memorandum of Understanding dated 11.03.2010. The applicant being fully aware of the 'status quo' order, entered into agreement with the defendants in violation of the restraint order of the Hon'ble Court.

16. Provisions of Order 1 Rule 10 (2) CPC are being reproduced herein for ready reference:-

*(2) Court may strike out or add parties.- 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.*

17. The Hon'ble Supreme Court of India has laid down two tests for determining the questions as to who is a necessary party to a suit for specific performance in landmark and celebrated full bench judgment titled **Kasturi vs. Iyyamperumal And Others.** (2005) 6 Supreme Court Cases 733 as follows:-

- (1) There must be a right to some relief against such party in respect of controversies involved in the proceedings,*  
*(2) No effective decree can be passed in the absence of such party.*



18. The Hon'ble Supreme Court in the abovesaid judgment (Kasturi supra) further examined the question as to who is a proper party in the suit for specific performance of contract for sale, in the following paras which are being reproduced herein for ready reference:-

*“Para 11. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance, **the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale.** Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in **Tasker v. Small** (1834) 40 ER 848 made the following observations:-*

*“It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suit of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law,*





*giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining, as nearly as possible, in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it. ”*

**13. *From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”***

19. It is clear from the perusal of the facts of the case in light of abovesaid judgment of the Hon'ble Supreme Court that the Applicant is neither a necessary party nor a proper party in the suit, as no relief has been sought by the plaintiff against the applicant, and presence of applicant is not necessary for adjudication of the matter.



20. Moreover, the Applicant in the present case is bound by the Principle of '*lis pendens*'.
21. The Hon'ble Delhi High Court has categorically explained the doctrine '*lis pendens*' in case titled **Bhim Singh Vs. Amar Nath and Ors.** (Hon'ble Delhi High Court) MANU/DE/0506/2008 in the following paras:-

*“16. The doctrine of lis pendens contained in Section 52 of the Transfer of Property Act is a complete answer. Section 52 of the Transfer of Property Act read as under:-*

*52. Transfer of property pending suit relating thereto.-During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government 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.***

- 17. 'Lis pendens' literally means a 'pending suit'; and the doctrine of lis pendens has been defined as the jurisdiction, power or control which a Court acquires over property involved in a suit pending the continuance of the action and until final judgment there under.*



18. In the decision reported as **Jaya Ram Mudaliar v. Ayya Swami and Ors.** Manu/SC/0507/1972: [1973]1SCR 139 the scope of lis pendens was explained as under:-

*Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject matter of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the Court to deal with it and thus make the proceedings infructuous.*

19. In decision reported as **Rajender Singh and Ors. v. Santa Singh and Ors.** Manu/SC/0342/1973 : [1974] 1SCR 381 referring to the doctrine of lis pendens, it was observed as under:

*15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a Court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."*



22. Thus, it is clear from abovestated observations of the Hon'ble Delhi High Court that an aliening of the suit property during pendency of the suit, is bound by the principle of lis pendens as mentioned in Section 52 of the Transfer of the Property Act.
23. In the present case, issues were framed by the Hon'ble Court vide order dated 05.02.2013 in respect of MoU dated 13.09.2005 and Amended MoU 28.03.2006. Admittedly, the applicant is not a party to both the MoUs. The evidence has already been completed in the case and the case has reached final stage as per the order of the Hon'ble Court dated 23.01.2018. Keeping in view the scope of the suit for specific performance, it is clear that the presence of Applicant is not necessary for complete adjudication of all the issues in the case. The applicant is bound by the outcome of the case, moreso, when he was fully aware of the pendency of the litigation between the plaintiff and defendants and of the 'status quo' order of the Hon'ble Court, at the time of execution of the MoU dated 11.03.2010.
24. Therefore, keeping in view the entire scenario, it is clear that by any stretch of imagination, Applicant is not entitled to be impleaded as a necessary and proper party to the suit as he has failed to qualify in both the tests as laid down by the Hon'ble Supreme Court of India in case of Kasturi (supra) in respect of



Order 1 Rule 10 CPC. The Applicant is not even a bona-fide purchaser of the suit property as he was fully aware of the pendency of the present suit at the time of execution of the MoU dated 11.03.2010. Moreover, the Applicant has executed the MoU in violation of restraint order of the Hon'ble Court. The Applicant is also liable for laches/delay as he had not taken any steps in any legal proceedings, to preserve his rights if any, against the defendants within reasonable period of time from the date of execution of the MoU. Moreover, the Applicant is bound by the outcome of the present case as per Section 52 of Transfer of the Property Act.

25. In view of the abovesaid reasoning, no ground for impleadment of Applicant in the present case is made out. Application of the Applicant under Order 1 Rule 10 CPC stands dismissed.

IA stands disposed off.

**TYAGITA SINGH, (DHJS)**  
**JOINT REGISTRAR (JUDICIAL)**

**AUGUST 24, 2022**  
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*This is a digitally signed order.*

*The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.*

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