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

+ **CS(OS) 3056/2014**

JASWIN ARORA

..... Plaintiff

Through: Ms. Ria Anand, Adv.

versus

HARMEET SINGH SOOD & ORS

..... Defendant

Through: Ms. Mansi Gupta and Mr. Pardeep
Gupta, Advocates for applicant no.1
Mr. Ravi Kapoor, Mr. Dushyant
Kumar, Advocates for applicant no.2

CORAM:

**MS. DEEPALI SHARMA (DHJS), JOINT REGISTRAR
(JUDICIAL)**

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ORDER
31.10.2017

I.A.No. 6500/2016

The above application has been filed by the Applicants, namely, (i) Mrs Janaki Devi and (2) Mrs. Sapna Yadav seeking impleadment in the instant suit as Defendant no.6 & 7 respectively.

The instant suit has been filed by the Plaintiff for Specific Performance of the Agreement to Sell/Memorandum of Understanding dated 19.05.2012 and 22.05.2012 in respect of the rear ground floor, rear basement and terrace rights along with proportionate land rights of the property bearing No. D-16, Greater Kailash Enclave, Part-I, New Delhi-110048



(hereinafter referred to as ‘the suit property’) and also for a decree of possession of the rear ground floor portion of the suit property.

The Applicants have filed the instant application stating that they are *bonafide* purchasers of the rear portion of the lower ground floor and rear portion of the ground floor of the suit property. It is stated that vide two separate Agreements to Sell dated 25.09.2016 and thereafter, two separate sale deeds, the Applicants purchased rear portion of the ground floor and lower ground floor respectively of the suit property, each admeasuring 170 sq. Yards. It is stated that the Applicants Mrs Sapna Yadav and Mrs. Janaki Devi purchased their respective shares in the suit property from Defendant no. 4 in the present suit, who in turn purchased the rear basement (sold to Applicant Janaki Devi) from Ms. Sonia Singh i.e. Defendant no. 2. Similarly, the rear ground floor portion (sold to Applicant/Sapna Yadav) was purchased by Mr. Joginder Kapoor (Defendant no.4) from Mr. Harmeet Singh (Defendant no.1). It is stated that the Applicants are in possession of their respective portions of the suit property since 25.09.2016.

The Applicants have placed on record the copy of Agreement to Sell, WILL, affidavit, possession letter and receipt executed by Defendant no. 4 in favour of the Applicant Mrs. Sapna Yadav in respect of the rear portion of the ground floor of the suit property. Similar documents executed by Defendant no.4 in favour of the Applicant Mrs. Janaki Devi for the rear basement have also been placed on record. Copies of the Assignment/Sale Deeds dated 20.10.2014 executed by Defendant no. 4 in favour of the Applicants, in respect of their respective shares in the suit property, have also been placed on record.

The Applicants have contended that they are *bonafide* purchasers in



respect of their portions of the suit property and they entered into the transaction with Defendant no. 4 without knowledge or information of the pendency of the present suit or any injunction order passed therein. It is also stated that Defendant no.4 never informed the Applicants that the suit property was involved in any litigation. It is stated that it is only when a board was affixed outside the suit property in pursuance of the directions of the Hon'ble Court in its order dated 23.11.2015, that the Applicants became aware of the pendency of the present suit and soon thereafter they have filed the instant application.

It is also contended by counsel for the Applicants that the Applicants have been in possession of their respective portions of the suit property since 25.09.2014 and a registered sale deed has also been executed in their favour on 20.10.2014. It is stated that Defendant no.4 filed his written statement wherein he has stated that he has already sold the rear portion of the ground floor and the lower ground floor of the suit property to the Applicants. It is accordingly contended that in light of the decisions of the Hon'ble Supreme Court in "*Thomson Press India Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. And Others* AIR 2013 SC 2389" and "*Vidur Impex and Traders Pvt. Ltd. Vs. Tosh Apartments* AIR 2012 SC 2925" and Hon'ble Delhi High Court in "*Charanjeet Singh Rekhi Vs. Harish Ahuja in FAO(OS) 202/2013, decided on 07.07.2014*, Applicants ought to be impleaded as party to the instant suit.

On the other hand, it is contended by counsel for the Plaintiff that he has filed a suit for Specific Performance against the Defendants and the Applicants have no role to play in the suit for Specific Performance filed by him. It is stated by him that since the Applicants have themselves claimed to be *bonafide* purchasers of the property without knowledge of the



pendency of the present litigation, accordingly in terms of Section 19 (b) of the Specific Relief Act, a suit for Specific Performance would not be maintainable against a *bonafide* purchaser, who has purchased the property without notice of the previous sale. It is also stated that the Applicants have filed the instant application to defeat the right and claim of the Plaintiff in respect of the property in question. In support of his arguments, he has relied upon the decision of Hon'ble Supreme Court in *Kasturi Vs. Iyyamperumal and ors.* 2005 (6) SCC 733.

It is also averred that the assignment of any right, title or interest in the property was in violation of order dated 09.10.2014 passed by the Hon'ble Court and accordingly the sale deed dated 20.10.2014 is void and illegal. It is accordingly stated that the possession of the Applicants is illegal and that the Applicants are tress-passers in the suit property. It is further stated that written statement filed by Defendant no. 4 has not been taken on record till date and the defence of Defendant no. 4 has already been struck off and therefore no reliance can be placed upon the written statement filed by Defendant no. 4.

It has been contended by the counsel for the Applicant that the Applicants are in possession of their respective shares of the suit property and no effective decree for possession can be passed without making them a party to the instant suit. Counsel for the Plaintiff on the other hand has urged that this suit primarily seeks specific enforcement of the contracts/Agreements to Sell dated 19.05.2012 and 22.05.2012 in respect of the rear ground floor, rear basement of the suit property and therefore the aspect of handing over of the possession to the Plaintiff can be agitated at the stage of execution of the decree.



It is relevant to note that the Hon'ble Supreme Court in *Kasturi's case* (*supra*) has observed that a person who asserts to be in independent possession of the suit property would be at liberty to obstruct the execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession. Thus mere possession cannot be a basis for seeking impleadment in a suit for Specific Performance unless the other conditions as stated in *Kasturi's case* and other judgments of the Hon'ble Supreme Court are fulfilled.

The counsel for the Plaintiff has also relied upon the judgment of the three Judges Bench of the Hon'ble Supreme Court in *Kasturi's case* to state that since the Applicants are strangers to the Agreement to Sell entered into between the Plaintiff and the Defendant no.1 therefore they ought not to be impleaded as parties to the instant suit. In this context the Hon'ble Supreme Court in *Kasturi's case* (*supra*) has observed as under:-

“11. As noted hereinafter, 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 Vs. Small 1834 (40) English Report 848, made the following observations:

It is not disputed that, generally, to a bill for Specific Performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of this jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such case, 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 in 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.” (Emphasis supplied)



It has accordingly been contended by the counsel for the Plaintiff that the Applicant is neither a necessary nor proper party to the suit inasmuch as it is not a party to the agreement to the sell entered into between the Plaintiff and the Defendant and the Applicant is therefore a stranger to the contract.

In this regard, it is noteworthy that in Kasturi's case, the Hon'ble Supreme Court made the following observations as well:

7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for Specific Performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.(Emphasis supplied)

Accordingly in the aforesaid judgment, the Hon'ble Supreme Court has specifically observed that in a suit for Specific Performance of a contract



the necessary party would be the parties to the contract or if they are dead, their legal representatives and also the person, who has purchased the contracted property from the vendor. It is further noted therein that a purchaser is the necessary party as he would be affected if he had purchased with or without notice of the contract but a person, who claims adversely to the claim of the vendor is however not a necessary party.

It is relevant to note that in *Kasturi's case*, the Applicants were claiming title not under the vendor but adverse to the title of the vendor. In view of the fact that the Applicants sought to be added as a necessary party on the basis of independent title to the suit property, its application was rejected in *Kasturi's case*. In the instant case, however, the Applicant is not claiming a title adverse to the vendor but a title which is derived under the vendor. The Applicants are claiming to be the owners of their respective shares of the suit property on the basis of the title derived from Defendant no. 4, who has in turn derived its title from Defendant no. 2 and Defendant no. 1. Accordingly, the Applicants are not claiming a title adverse to the vendor.

Additionally in *Thomson Press India Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. And Others AIR 2013 SC 2389*, the Hon'ble Supreme Court considered all the earlier judgments governing the disposal of the application for impleadment in a suit for Specific Performance and noted with approval the principles laid down in the case of *Vidur Impex and Traders Pvt. Ltd. Vs. Tosh Apartments AIR 2012 SC 2925* which are the following:



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.*

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.*

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.*

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.*

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.*

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. (Emphasis supplied)

The Hon'ble Supreme Court also observed 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 the 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.

Furthermore the Plaintiff has urged that since the Applicants have themselves claimed to be *bonafide* purchasers of the property without knowledge of the pendency of the present litigation, hence, in terms of Section 19 (b) of the Specific Relief Act, a suit for Specific Performance would not be maintainable against a *bonafide* purchaser, who has purchased the property without notice of the previous sale and therefore the Applicants cannot be made parties to the instant suit. Perusal of Section 19 (b) of the Specific Relief Act manifests that a contract for specific performance may be enforced against the parties to the contract and the persons mentioned in the said section. Clause (b) of Section 19 indicates that a suit for specific performance cannot be enforced against a *bonafide* purchaser from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit. However, this does not mean that such a purchaser cannot be made a party to the suit merely because such a defence may be available to it. The contention of the Plaintiff in this regard is therefore untenable.

Additionally, the Plaintiff has urged that the assignment of any right, title or interest in the property by way of the Assignment/Sale Deed dated



20.10.2014 was in violation of order dated 09.10.2014 passed by the Hon'ble Court and accordingly the sale deed dated 20.10.2014 is vitiated and cannot be looked into and consequentially the Applicants are not entitled to be impleaded as a party to the instant suit. It is noteworthy that in this context the Hon'ble Supreme Court in *Thomson case (supra)* dealt with the effect of *pendete lite* sale and held that the transfer of the suit property *pendete lite* is not *void ab initio* and that the purchaser of any such property takes the bargain subject to the rights of the Plaintiff in the pending suit. The Hon'ble Apex Court also held that the breach of any such injunction does not render the transfer whether by way of an absolute sale or otherwise ineffective and that the party committing the breach may have to incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor. Accordingly, the contention of the plaintiff in this regard is misconceived.

In view of the above discussion, the applicants are necessary and proper party to the instant suit as their presence would enable the court to completely, and effectively adjudicate upon all the issues in the instant suit. The instant application is accordingly allowed and the Applicants are impleaded as Defendant no.6 & 7 in the instant suit.

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Let the amended memo of parties be filed within four weeks.

Let the defendant no.6 & 7 file their written statements within four weeks with advance copy.

Replication be filed within two weeks thereafter.



Let the parties file their original/certified copies of the documents within six weeks with advance copy.

Parties are directed to file their affidavit of admission/denial within 8 weeks with advance copy.

Re-notify the matter for completion of pleadings and admission/denial of documents on **21st December, 2017.**

DEEPALI SHARMA (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 31, 2017/nk