H. Anjanappa vs A. Prabhakar on 29 January, 2025

2025 INSC 121 REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1180-1181 OF 2025
(arising out of S.L.P. (Civil) Nos. 5785-5786 of 2023

H. ANJANAPPA & ORS. …APPELLANT

VERSUS

A. PRABHAKAR & ORS. …RESPONDENT(

WITH

CIVIL APPEAL NOS. 1182-1183 OF 2025
(arising out of S.L.P. (Civil) Nos. 6724-6725 of 2023

H. ANJANAPPA & ORS. …APPELLANT

VERSUS

BEENA ANTHONY & ORS. …RESPONDENT(

JUDGMENT

Date: 2025.01.29 15:24:27 IST Reason:

J.B. PARDIWALA, J. :

1. Leave granted.

2. Since the issues raised in the above captioned appeals are the same, the parties are also same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. The appeals arise from the order passed by the High Court of Karnataka at Bengaluru dated 16.11.2022 in I.A. Nos. 1 & 3 of 2018 respectively in Regular First Appeal No. 1303 of 2018 by which the High Court allowed the said I.A. Nos. 1 & 3 of 2018 respectively filed by the respondents herein and thereby condoned the delay of 586 days in filing the said appeal against the judgment and decree dated 16.09.2016 passed by the Senior Civil Judge and JMFC, Devanahalli in Original Suit No. 458 of 2006 instituted for specific performance of contract. By the order passed in I.A. Nos 1 & 3 of 2018 respectively, the High Court granted leave to appeal to the Respondent Nos. 1 and 2 herein (subsequent purchasers) against the original judgment and decree of specific performance as they were not parties in the suit proceedings.

4. The facts giving rise to these appeals may be summarised as under.

The description of the parties before this Court and before the Trial Court is tabulated as follows:

BEFORE THIS COURT	BEFORE THE TRIAL COURT	REMARKS
Appellants	Plaintiffs	Agreement of Sale Holders/Purchasers
Respondent Nos. 1-2 Not	a party as their impleadment application was rejected. Order remained unchallenged and hence, attained finality	Lis Pendens Purchasers (Alleged to have purchased from Subsequent Purchaser)

Respondent Nos. LRs. Of Original Defendant Original Owner Respondent No. Defendant No. 2 GPA Holder Respondent No. Defendant No. 3 Subsequent Purchaser For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court.

(I) One Late Smt. Daisy Shanthappa – Original Defendant No.1 (since deceased represented through her LRs-Respondents Nos. 3-5 herein) was the absolute owner of lands bearing Sy. No. 176/42 measuring 32 acres and Sy. No. 176/43 measuring 10 acres, situated adjacent to each other in Bagalur Village, Jala Hobli, Bangalore North Taluk. The Suit Schedule Property was agreed to be sold to the plaintiffs, the appellants herein, vide an Agreement of Sale dated 05.09.1995 for a total sale consideration of Rs.20,00,000/- by the Defendant No.1 through her Power of Attorney holder one Shri V. Chandramohan (Original Defendant No. 2/ Respondent No.6 herein). Earnest money of Rs.5,00,000/- was paid and the Defendant Nos. 1 & 2 undertook to get the unauthorized occupants in the Suit Schedule Property evicted.

(II) Since the unauthorized occupants on the Suit Schedule Property were not evicted by the Defendant Nos.1 & 2, a Supplementary Agreement dated 10.03.1997 was executed extending the

time for execution of Sale Deed. Out of the entire sale consideration of Rs.20,00,000/- a substantial amount of Rs.15,00,000/- was paid by the appellants herein to the Defendant No. 1.

(III) While such being the case, and during the subsistence of Sale Agreement in favour of the Plaintiffs, the Defendant No.1 having lost her right over the suit schedule property in pursuance of the general power of attorney executed in favour of Defendant No.2, which has been acted upon, allegedly executed a Sale Deed in favour of Respondent No. 7/Defendant No. 3 selling land to an extent of 40 acres out of 42 acres for a sum of Rs.40,00,000/-. The plaintiffs became aware of the aforementioned sale transfer, when the Defendant No.3 attempted to change the revenue records in his name.

(IV) Aggrieved by the same, the plaintiffs filed O.S. No.1093/2003 (later renumbered as O.S. No.458/2006) before the Court of Principal Civil Judge (Sr. Dn.) Bengaluru Rural District (hereinafter referred to as the Trial Court) inter alia seeking Specific Performance of the Agreement of Sale. The Trial Court upon appreciating the case of the plaintiffs admitted the suit and on 17.12.2003 passed a specific Order of Temporary Injunction restraining the Defendant Nos. 1-3 from alienating and creating third party rights in the Suit Schedule Property.

(V) The Defendant No.3 however, in contravention of specific order of injunction and during the subsistence of the order of injunction, sold a portion of Suit Schedule Property to the extent of 4 Acres (and 6 Acres) in Sy. No. 176/43 in favour of Respondents Nos. 1-2 herein. (VI) It is relevant to note that the Defendant No.1 executed a Deed of Confirmation in favour of the plaintiffs admitting the Agreement of Sale in favour of the plaintiffs and further acknowledged the receipt of a substantial sum of Rs. 15,00,000/- out of Rs.20,00,000/- in furtherance of the Agreement of Sale dated 05.09.1995 and further stating that the sale made by her in favour of Defendant No.3 was due to the fact that she was being misled by some persons of oblique mindsets.

(VII) At this stage, on 10.07.2007, the Respondent Nos. 1-2 respectively herein filed an Interlocutory Application - I.A. No.4 in O.S. No.458/2006 seeking to implead themselves as Defendants in the said suit. The said I.A. No.4 was however rejected by the Trial Court vide Order dated 06.08.2014 on the ground that the Respondent Nos. 1-2 herein had purchased the portion of Suit Schedule Property without the permission of the court, during the pendency of suit and in contravention of a Specific Order of Injunction against alienation and creation of third party rights. The same being contrary to Section 52 of the Transfer of Property Act, 1882 (for short, “Transfer of Property Act”). The said order of rejection of impleadment never came to be challenged in appeal and thereby, the said issue has attained finality. (VIII) Thereafter, the Trial Court upon appreciation of evidence on record passed its final Judgment and Decree in O.S. No. 458/2006 decreeing the suit of the plaintiffs and granting relief of specific performance with a specific direction to execute a sale deed within a period of 2 months. Assailing the legality of the said Order, the Defendant No. 3 (who is the Vendor of Respondent Nos. 1 & 2 herein) filed R.F.A. No.396/2017 before the High Court which came to be dismissed on 04.07.2017. (IX) It is in the aforestated backdrop that the Respondent Nos.1 & 2 respectively, in spite of a Specific Order of Injunction against the Defendant No. 3 (Vendor of the Respondent Nos.1 & 2) of not creating third party rights, purchased the suit property in contravention of Section 52 of the Transfer of Property Act. More importantly the application for

impleadment in the Suit also came to be rejected and having not been challenged by the contesting Respondent Nos. 1 & 2, the issue had attained finality. After dismissal of the appeal filed by their Vendor i.e., Defendant No. 3, Respondent Nos 1 & 2 proceeded to challenge the order of Trial Court decreeing the Suit of the plaintiffs. After almost 2 years of passing of the Judgment and Decree dated 16.09.2016 in O.S. No.458/2006 and 11 years from the filing of the Impleadment Application, the Respondent Nos. 1 & 2 herein preferred RFA No.1303/2018 before the High Court challenging the said Decree.

(X) The Respondent Nos. 1 & 2 filed I.A. No.1 & 3 of 2018 seeking condonation of delay of 586 days in preferring RFA No.1303/2018, and also prayed for leave to appeal. The said I. A.s were opposed by the plaintiffs. The High Court, however, vide the impugned order allowed both the I.A. Nos. 1 & 3 of 2018 respectively by condoning the inordinate and unexplained delay of 586 days and further permitting the Respondents Nos. 1 and 2 herein to prefer the appeal by granting leave.

5. Being aggrieved by the same, the plaintiffs are here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS/APPELLANTS

6. Mr. Anand Sanjay M. Nuli, the learned senior counsel appearing for the appellants (original plaintiffs) vehemently submitted that the High Court committed a serious error in condoning the unexplained and inordinate delay of 586 days in preferring the regular first appeal and also by granting leave to file appeal to the Respondent Nos. 1 and 2 i.e., subsequent purchasers of the suit property. According to the learned counsel, it is not just enough for the Respondent Nos. 1 and 2 respectively to say that they were not aware of the suit proceedings before the Trial Court. The Respondent Nos. 1 and 2 had, in fact, preferred an application for being impleaded in the suit as defendants and such application which was filed on 10.07.2007 came to be rejected vide order dated 06.08.2014. The said order was never challenged by the Respondent Nos. 1 and 2 herein and it has attained finality.

7. Mr. Nuli submitted that having purchased the suit property pendente lite on 05.04.2004 and that too in contravention of the order of temporary injunction dated 17.12.2003 passed by the Trial Court, the Respondent Nos. 1 and 2 respectively do not deserve any indulgence. It was argued that the Respondent Nos. 1 and 2 cannot be said to be bona fide purchasers of the suit property for value without notice.

8. In such circumstances referred to above, the learned senior counsel prayed that there being merit in his appeals, those may be allowed. SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1 AND 2 RESPECTIVELY

9. Mr. Gautam Narayan, the learned senior counsel appearing for the subsequent purchasers i.e. Respondent Nos. 1 and 2 submitted that no error, not to speak of any error of law, may be said to have been committed by the High Court in passing the impugned order. According to the learned counsel, there is no question of law involved in the present appeals warranting any interference with the impugned order passed by the High Court. He would submit that his clients are bona fide

subsequent purchasers of the suit property and as subsequent purchasers, they have a substantial interest in the suit property and also in the final outcome of the suit.

10. The learned counsel submitted that the order passed by the Trial Court, in itself, would not render the transfer made to the subsequent purchasers ineffective and the validity of such transfer is always subject to the outcome of the litigation.

11. The learned counsel submitted that in the present case, collusion between the vendor of the answering respondents who are subsequent purchasers pendente lite i.e., Defendant No. 3 and the plaintiffs, is writ large on the face of the record. He submitted that the bar on transfer of immovable property which is subject matter of a litigation under Section 52 of the Transfer of Property Act is not applicable to the present case as Section 52 expressly excludes from its ambit collusive proceedings and, therefore, the High Court correctly granted an opportunity to his clients to establish this fact by allowing them to prefer an Appeal.

12. He submitted that unfortunately the Defendant No. 3 colluded with the plaintiffs in order to get the suit decreed vide judgment dated 16.09.2016 as is borne out from the following facts:

(i) Defendant No. 3 did not cross-examine the witnesses of the Plaintiffs;

(ii) Defendant No. 3 did not lead any rebuttal evidence in the suit;

(iii) Despite filing an appeal against the decree dated 16.09.2016, he withdrew the Appeal without stating any reason on 04.07.2017, and

(iv) In fact, even after having succeeded in the suit and obtaining a decree dated 16.09.2016, the plaintiffs did not get the same executed and have allowed the Defendant No.3 to enter into a registered agreement of sale dated 12.09.2019 for the suit property for a consideration of Rs.20 crores with third parties.

In light of the aforesaid facts, he submitted that the High Court was justified in granting permission to the answering respondents to prefer an appeal against the decree dated 16.09.2016 in order to defend their rights.

13. He further submitted that the impugned order is also justified in the context of settled law that a subsequent purchaser should ordinarily be allowed to implead himself in pending proceedings in order to protect his interests when the transferor fails to do so.

14. He submitted that the approach of the High Court in the impugned order is only a logical extension of the aforesaid principle in so far as it only extends to subsequent purchasers, i.e., the answering respondents, the opportunity to defend their interests in the face of ex facie collusion by their vendors with plaintiffs in the suit.

15. No prejudice would be caused to the plaintiffs if the Respondent Nos. 1 and 2 are merely allowed to agitate their appeal on merits keeping in view the fact that they are subsequent purchasers for value who were duped by their vendor.

16. He submitted that the condonation of delay in preferring the appeals is justified in view of Section 17 of the Limitation Act, 1963 read with Section 5 thereof.

17. He submitted that his clients, both of whom are senior citizens, were residing with their children in Scotland when their application for impleadment was rejected by the Trial Court and were assured by Defendant No. 3 that he would defend their interest in the suit and therefore due to the trust and faith reposed in him, they did not make any efforts to prosecute the suit or the Appeal.

18. In the last, the learned counsel submitted that the lis pendens purchasers although not arrayed as parties in the suit, yet they are the persons who could be said to be claiming as defendants under Section 146 of the Code of Civil Procedure, 1908 (for short "CPC").

19. In such circumstances referred to above, the learned senior counsel prayed that there being no merit in the present appeals, those may be dismissed.

ANALYSIS

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

21. The High Court in the impugned order observed as under:-

> "13. In these two applications, we are concerned with the prayer for leave to prosecute the appeal and condonation of delay. It is not disputed that appellants have purchased 4 acres of land out of the suit schedule property. They did file an application to implead themselves in the suit, but unsuccessfully. One of the main ground urged in support of the application for condonation of delay is that they were assured by their vendor-third defendant that he would protect their interest.
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> 14. Shri Holla, pointed out in para 18 of the judgment that the learned trial Judge has adverted to the evidence of P.W. 2 and his evidence has remained unchallenged as he was not subjected to cross-examination and none of the defendants stepped into the witness box. Further the third defendant has filed R.F.A.No.396/2017 and withdrew the same. It is pleaded in the affidavit in support of the application for condonation of delay that the appellants are aged 75 and 66 years respectively and living with their children in Scotland. This averment has remained unrebutted.
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> 15. Keeping in view the fact that appellants have purchased the immovable property measuring 4 acres, that they are senior citizens and their vendor has not defended the

> suit nor prosecuted the first appeal filed before this Court, we are of the opinion that rights of the parties cannot be scuttled by dismissal of the application seeking condonation of delay.

Curiously appellants' vendor namely the third defendant/ respondent No.8, though served and represented by advocate has remained absent. Thus, the allegations made against him in appellants' affidavit have remained uncontroverted. Therefore, in our considered view, the instant applications merit consideration.

16. In view of the above, I.As.No.1 & 3 of 2018 are allowed subject to appellants paying cost of Rs. 25,000/- for each of the applications and cumulatively Rs.50,000/- to the plaintiffs/ respondent Nos.1 to 3."

22. Thus, a plain reading of the impugned order passed by the High Court would indicate that what weighed with the High Court was the fact that the Respondent Nos. 1 and 2 respectively are aged 75 and 66 years and are living with their children in Scotland. The High Court proceeded further to observe that the Respondent Nos. 1 and 2 have purchased 4 acres of land out of a large chunk of subject property and their vendor i.e. the original owner failed to protect their interest in the suit proceedings.

23. We are of the view that the High Court committed an egregious error in condoning delay of 586 days in filing the regular first appeal on mere asking. We are not convinced with the sufficient cause assigned by the Respondent Nos. 1 and 2 respectively for the delay of 586 days. In the facts and circumstances of the case, it cannot be said that the Respondent Nos. 1 and 2 were vigilant of their so called rights. The High Court should have put an end to the entire litigation by declining to condone the delay itself far from granting leave to appeal.

24. Having taken the view that the High Court committed an egregious error in condoning the delay, we could have closed this matter without observing or saying anything further by setting aside the impugned order passed by the High Court. However, we would like to say something also as regards the grant of leave to appeal by the High Court in favour of the Respondent Nos. 1 and 2 respectively, more particularly in light of two submissions canvassed by Mr. Nuli, the learned counsel appearing for the appellants herein. The first submission canvassed by the learned counsel is that once the impleadment application filed by the Respondent Nos. 1 and 2 respectively herein invoking the provisions of Order I Rule 10 CPC came to be rejected by the Trial Court and the said order attained finality, thereafter there is no question of seeking leave to appeal against the final decree granting specific performance, and the second submission canvassed by the learned counsel is that the findings recorded by the Trial Court while rejecting the impleadment application would operate as re judicata in the appeal that may be filed by the transferee pendente lite against the final decree of specific performance.

LAW GOVERNING THE GRANT OF LEAVE TO APPEAL

25. Sections 96 and 100 respectively of the Code of Civil Procedure, 1908 (for short, the "CPC") provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the appellate court. [see : Sri V.N. Krishna Murthy and another vs. Sri Ravikumar and others (Civil Appeal Nos.2701-2704 of 2020, decided on 21st August 2020)].

26. A five-Judge Bench of the Privy Council in Nagendra Nath Dey vs. Suresh Chandra Dey, AIR 1932 PC 165, speaking through Sir Dinshaw Mulla observed that there is no definition of appeal in the CPC, but there is no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent.

27. A party to a suit adversely affected by a decree or any of his representatives-in-interest may file an appeal. But a person who is not a party to a decree or order may, with the leave of the court, prefer an appeal from such decree or order if he is either bound by a decree or order or is aggrieved by it or is otherwise prejudicially affected by it.

28. In Adi Pherozshah Gandhi vs. H.M.Seervai, AIR 1971 SC 385, a Constitution Bench of this Court in paragraph 46 held thus:

> "46. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to section 11 of the Code of Civil Procedure."

29. In Smt. Sukhrani (dead) by L.R's and others vs. Hari Shanker and others, AIR 1979 SC 1436, the interlocutory order was not challenged. The same was challenged after the final order was passed by the court. This Court in paragraph 5 of the report held thus:

> "5. It is true that at an earlier stage of the suit, in the proceeding to set aside the award, the High Court recorded a finding that the plaintiff was not entitled to seek reopening of the partition on the ground of unfairness when there was neither fraud nor misrepresentation. It is true that the plaintiff did not further pursue the matter at that stage by taking it in appeal to the Supreme Court but preferred to proceed to the trial of his suit. It is also true that a decision given at an earlier stage of a suit will bind the parties at later stages of the same suit. But it is equally well settled that because a matter has been decided at an earlier stage by an interlocutory order and

> no appeal has been taken therefrom or no appeal did lie, a higher Court is not precluded from considering the matter again at a later stage of the same litigation."

30. We may also refer to the observations of this Court in the case of Smt. Jatan Kumar Golcha vs. Golcha Properties Private Limited, reported in (1970) 3 SCC 573. The same reads thus:

> "It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment."

31. This Court in the case of State of Punjab and others vs. Amar Singh and another, reported in (1974) 2 SCC 70, while dealing with the maintainability of appeal by a person who is not party to a suit, has observed thus:

> "Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."

32. In the case of Baldev Singh vs. Surinder Mohan Sharma and others, reported in (2003) 1 SCC 34, this Court held that an appeal under Section 96 of the CPC would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:

> "A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

33. In the aforesaid judgment, a compromise decree was passed in a suit between husband and wife to the effect that their marriage stood dissolved from an earlier date by virtue of a memorandum of customary dissolution of marriage. The said decree was sought to be challenged by a person who was having a property dispute with the husband and who had filed complaints against the husband to the employer of the husband, in contravention of the Employment Rules having contracted a second marriage. This Court, while holding that the person who was seeking to challenge the decree had no locus standi to do so, held: (a) that there is no dispute that as against the decree, an appeal would be maintainable in terms of Section 96 of the CPC; such an appeal, however would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree; (b) that the dispute between the said person and the husband was in relation to a property and the said person, save for making complaints to the employer of the husband, had nothing to do with the marital status of the husband; (c) locus of a person to prefer an appeal in a matter of this nature is vital; (d) the court cannot enlarge the scope of locus, where the parties are fighting litigations;

(e) the pleas of the said person did not disclose as to how and in what manner he would be prejudiced if the compromise decree was allowed to stand; (f) that the challenge by the said person was not bona fide; and, (g) even if the compromise decree was a judgment in rem, the said person could not have challenged the same as he was not aggrieved therefrom.

34. In the case of A. Subash Babu vs. State of A.P. and another, reported in (2011) 7 SCC 616, this Court held as under:

> "The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."

35. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (see : Shanti Kumar R. Canji vs. Home Insurance Co. of New York, (1974) 2 SCC 387 and State of Rajasthan & Ors. vs. Union of India & Ors., (1977) 3 SCC 592).

36. We may also refer to a Division Bench decision of the Madras High Court in the case of Srimathi K. Ponnalagu Ammani vs. The State of Madras represented by the Secretary to the Revenue Department, Madras and Ors., reported in AIR 1953 Madras 485. The High Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:

> "Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

37. We may look into the decision in the case of Province of Bombay vs. W.I. Automobile Association, reported in AIR 1949 Bombay 141, and the English practice on which that decision is based. In the Province of Bombay case, Chagla C.J. and Bhagwati J. held that a person not a party to a suit may prefer an appeal if he is affected by the order of the Trial Court provided he obtained leave from the Court of appeal. The learned Chief Justice observed as follows:

> "The Civil Procedure Code does not in terms lay down as to who can be a party to an appeal. But it is clear and this fact arises from the very basis of appeals, that only a

> party against whom a decision is given has a right to prefer an appeal. Even in England the position is the same. But it is recognised that a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial Court, provided he obtains leave from the Court of appeal; therefore whereas in the case of a party to a suit he has a right of appeal, in the case of a person not a party to the suit who is affected by the order he has no right but the court of appeal may in its discretion allow him to prefer an appeal." (Emphasis supplied)

38. Bhagwati J. referred to the decision of the Madras High Court in Indian Bank Limited, Madras vs. Seth Bansiram Jashamal Firm through its Managing Partner, AIR 1934 Mad 360, and accepted it as authority for the position that no person who is not a party to a suit or proceeding has a right of appeal. But if he was aggrieved by a decision of the court, the remedy open to him was to approach the appellate court and ask for leave to appeal which the appellate court would grant in proper cases. The learned Judge cites a passage from the decision in In re Securities Insurance Company, (1894) 2 Ch D 410, where Lindley L.J. said that the practice of the Courts of Chancery, both before and after 1862, was well-settled that while a person who was a party could appear without any leave a person who without being a party was either bound by the order or was aggrieved by it or was prejudicially affected by it could not appeal without leave.

39. The law has been succinctly explained as regards the grant of leave to appeal in In re Markham Markham vs. Markham, (1881) 16 Ch D 1; In re Padstow Total Loss and Collision Assurance Association, (1882) 20 Ch. D 137 at p. 142; Attorney General vs. Marquis of Ailesbury, (1885) 16 QBD 408 at p. 412, and In re Ex Tsar of Bulgaria, (1921) 1 Ch D 107 at p. 110. The position is thus stated in the Annual Practice for 1951 at page 1244:

> "Persons not parties on the record may, by leave obtained on an 'ex parte' application to the Court of appeal, appeal from a judgment or order affecting their interests, as under the old practice."

40. Halsbury's Laws of England, Vol. 26, page 115, gives the same rule in a different form:

> "A person who is not a party and who has not been served with such notice (notice of the judgment or order) cannot appeal without leave, but a person who might properly have been a party may obtain leave to appeal."

41. In more or less similar terms, the rule and its limits are stated in Seton on Judgments and Orders, 7th Edn., Vol. 1, at p. 824:

> "Where the appellant is not a party to the record he can only appeal by leave to be obtained on motion 'ex parte' from the Court of Appeal..... Leave to appeal will not be given to a person not a party unless his interest is such that he might have been made a party." (Emphasis supplied)

42. On the anvil of the decisions cited supra, the instant case may be examined. Admittedly, the application filed by the Respondent Nos. 1 and 2 respectively under Order I Rule 10 CPC for being impleaded as party to the suit was rejected by the Trial Court. The said order was not challenged. In view of the authoritative pronouncement of the cases cited supra, the conclusion is irresistible that rejection of the application filed under Order I Rule 10 CPC is per se not a ground to reject the application for leave to file appeal. The appellate court has to see whether the transferee pendente lite is aggrieved by a decree or is otherwise prejudicially affected by it. The appellate court has to examine that if the decree is allowed to stand, the same will operate res judicata.

43. The principles governing the grant of leave to appeal may be summarised as under:

> i. Sections 96 and 100 of the CPC respectively provide for preferring an appeal from an original decree or decree in appeal respectively;
>
> ii. The said provisions do not enumerate the categories of persons who can file an appeal;
>
> iii. However, it a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of an aggrieved person;
>
> iv. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the court;
>
> v. A person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned;
>
> vi. The expression “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury;
>
> vii. It would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and viii. Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

44. The issue can also be examined from a different angle.

45. Section 52 of the Transfer of Property Act reads thus:

> “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 immoveable 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."

46. A transfer pendete lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal & Ors. vs. B. Shama Rao & Ors., AIR 1956 SC 593, this Court while interpreting Section 52 of the Transfer of Property Act observed:

> "...The words "so as to affect the rights of any other party thereto under any decree or order which may be made therein", make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto."

47. To the same effect is the decision of this Court in Vinod Seth v. Devinder Bajaj, (2010) 8 SCC 1, where this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite:

> "42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

48. In Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd., [2013] 2 SCR 74, Justice T.S. Thakur (As His Lordship then was), while concurring with Justice M.Y. Eqbal, summed up the legal position as follows:

> "There is, therefore, little room for any doubt 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. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless 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.

> The third dimension which arises for consideration is about the right of a transferee pendete lite to seek addition as a party defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC.
>
> What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is as under:
>
> "Procedure in case of assignment before final order in suit. – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)." A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party defendant. Such being the position all that is required to be examined is whether a transferee pendete lite could in a suit for specific performance be added as a party defendant and, if so, on what terms." (Emphasis supplied)

49. We shall now look into Section 146 CPC. It provides:

> "146. Proceedings by or against representatives ☐Save as otherwise provided by this Court or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or application may be made by or against any person claiming under him."

50. A lis pendens transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order XXI of the CPC which speaks of transfer or assignment inter vivos or by operation of law made by the plaintiff-decree-holder. The transferee may apply for execution of

the decree of the Court and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. It is relevant to note that a provision like Section 146 of the CPC was not be found in the preceding Code of Civil Procedure, 1859 and was for the first time incorporated in the CPC. In Order XXI Rule 16 also an explanation was inserted through amendment made by Act No. 104 of 1976 w.e.f. 01.02.1977 where by the operation of Section 146 CPC was allowed to prevail independent of Order XXI Rule 16 CPC.

51. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant-judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the Court.

52. The law laid down by a four-Judge Bench of this Court in Smt. Saila Bala Dassi vs. Sm. Nirmala Sundari Dassi and Anr., [1958] SCR 1287, is apt for resolving the issue arising for decision herein. A transferee of property from defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order XXII Rule 10 of the CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22 Rule 10. In an appeal preferred by such transferee, this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order XXII Rule 10 of the CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further the expression “claiming under” is wide enough to include cases of devolution and assignment mentioned in Order XXII Rule 10. Whoever is entitled to be but has not been brought on record under Order XXII Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the CPC. A person having acquired an interest in suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of the CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that being a purchaser pendente lite, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights. [See : Raj Kumar vs. Sardari Lal, (2004) 2 SCC 601]

53. In Dhurandhar Prasad Singh vs. Jai Prakash University, reported in (2001) 6 SCC 534, this Court held that the plain language of Order XXII Rule 10 CPC does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of the plaintiff has devolved. Likewise, in a case where interest of the defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of a party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing

about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him, then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him. The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject-matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course, which is but natural, or by colluding with the other side. If the submission of Mr. Nuli is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary.

54. In Amit Kumar Shaw vs. Farida Khatoon, AIR 2005 SC 2209, this Court held that a transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case. This judgment has been followed in Thomson Press (India) Ltd. (supra).

55. In fact, the scope of Order I Rule 10 and Order XXII Rule 10 CPC is similar. Therefore, the principles applicable to Order XXII Rule 10 CPC, in order to bring a purchaser pendente lite on record, are applicable to Order I Rule 10 CPC. Under Order I Rule 10(2) CPC, the Court is required to record a finding that person sought to be impleaded as party in the suit is either necessary or proper party. While Section 146 and Order XXII Rule 10 CPC confers right upon the legal representative of a party to the suit to be impleaded with the leave of the Court and continue the litigation. While deciding an application under Section 146 and Order XXII Rule 10 CPC, the Court is not require to go in the controversy as to whether person sought to be impleaded as party in the suit is either necessary or proper party. If the person sought to be impleaded as party is legal representative of a party to the suit, it is sufficient for the Court to order impleadment/substitution of such person.

56. Thus, a lis pendens transferee though not brought on record under Order XXII Rule 10 CPC, is entitled to seek leave to appeal against the final decree passed against this transferor, the defendant in the suit. However, whether to grant such leave or not is within the discretion of the court and such discretion should be exercised judiciously in the facts and circumstances of each case.

57. Having regard to the fact that the Respondent Nos. 1 and 2 respectively purchased the suit property during the pendency of the suit instituted for specific performance and that too, while the injunction against the original owner (transferor) was operating, the Respondent Nos. 1 and 2 respectively could not be said to have even made out any good case for grant of leave to appeal.

58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

> i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;
>
> ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;
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> iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;
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> iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;
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> v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;
>
> vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;
>
> vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and, viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.
>
> CONCLUSION

59. In the overall view of the matter, we are convinced that the impugned order passed by the High Court is unsustainable in law.

60. In the result, the appeals succeed and are hereby allowed. The impugned order passed by the High Court is set aside.

61. If the Respondent Nos. 1 & 2 feel that they have been duped or cheated by the Respondent No. 7/Defendant No. 3, then it shall be open for them to avail appropriate legal remedy before the appropriate forum in accordance with law for the purpose of recovery of the amount towards sale consideration paid at the time of execution of the sale deed.

62. Pending application(s), if any, stand disposed of accordingly.

……J (J.B. PARDIWALA) ……J (R. MAHADEVAN) New Delhi January 29, 2025