# Thomson Press (India) Ltd vs Nanak Builders & Investrs.P.Ltd & Ors on 21 February, 2013

**Equivalent citations: AIR 2013 SUPREME COURT 2389, 2013 (5) SCC 397, 2013 AIR SCW 1617, (2013) 1 CLR 877 (SC), (2013) 2 LANDLR 292, (2013) 3 ALLMR 408 (SC), 2013 (3) ALLMR 408, 2013 (1) CLR 877, 2013 ( 2) ORISSA LR 1, 2013 (3) SCALE 26, AIR 2013 SC (CIVIL) 961, 2013 (3) KCCR 281 SN, (2013) 2 MAD LW 748, (2013) 119 REVDEC 825, (2013) 2 ORISSA LR 1, (2013) 3 PUN LR 26, (2013) 3 ANDHLD 111, (2013) 2 RECCIVR 875, (2013) 4 ICC 353, (2013) 3 SCALE 26, (2013) 1 WLC(SC)CVL 453, (2013) 98 ALL LR 280, (2013) 2 ALL RENTCAS 121, (2013) 3 ALL WC 2442, (2013) 2 CAL HN 165**

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**Bench: T.S. Thakur, M.Y. Eqbal**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1518 of 2013

(Arising out of Special Leave Petition (Civil) No. 24159 of 2009)

Thomson Press (India) Ltd.
…..Appellant (s)

Vs.

Nanak Builders & Investors P.Ltd. & Ors. …..Respondent(s)

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. This appeal is directed against the order passed by the division bench of the High Court of Delhi in FAO No. 295 of 2008 affirming the order of the Single Judge and rejecting the petition filed by the appellant under Order 1 Rule 10 of CPC for impleadment as defendants in a suit for specific performance of contract being Suit No. 3426 of 1991 filed by plaintiff-Respondent No.1.

3. Although the case has a chequered history, the brief facts of the case can be summarized as under :-

4. Mrs. Lakhbir Sawhney, Respondent No. 2 and son Mr. H.S. Sawhney, the predecessor of Respondent No. 3 (a) to (d) were the owners of the property known as "Ojha House" / "Sawhney Mansion", F-Block, Connaught Place, New Delhi. (These respondents shall be referred as "the Sawhneys" for the sake of convenience). M/s Nanak Builders and Investors Pvt. Ltd., Respondent No.1 is the plaintiff in the Suit. The plaintiff-Respondent No.1 filed a suit in the High Court of Delhi being Suit No. 3426 of 1991 against the defendants-respondents Sawhneys' for a decree for specific performance of agreement. The case of the plaintiff-respondent is that on 29.05.1986 the defendant-respondent entered into an agreement with the plaintiff-respondent for sale of an area measuring about 4000 sq.ft. on the 1st Floor of F-26, Connaught Place, New Delhi on the consideration of Rs. 50 lakhs. Out of the said consideration, a sum of Rs. 1 lakh was paid by the plaintiffs to the defendants vide cheque no. 0534224 drawn from Union Bank of India, New Delhi. The aforesaid property shall be referred to as the "suit property" which was in the tenancy of M/s Peerless General Finance Company Limited. In the said agreement it was agreed inter alia that if the premises is vacated and the plaintiff did not complete the sale on the defendant, getting all permissions, sanctions etc., the defendant shall have the right to forfeit the money. Plantiff's further case was that M/s Peerless General Finance Company Limited has given a security deposit of Rs. 25 lakhs approximately and did not vacate the premises and called upon the defendants that they will vacate the premises only when the defendants make the payment, that too on the expiry of the lease which expired around September, 1990. It is alleged by the plaintiff that during the intervening period, it has been making part payments from time to time out of the said consideration amount. In May 1991, the defendants got the said suit premises vacated from M/s Peerless General Finance Company Limited. The plaintiffs have immediately approached the defendants to receive the balance consideration but the same was avoided by the defendant. A public notice was, therefore, issued in 'The Hindustan Times' , New Delhi so that the defendants 'Sawhneys' do not sell, transfer or alienate the said property to any other person. Lastly, it was alleged by the plaintiff that despite being always ready and willing to complete the transaction, the defendant avoided to obtain requisite permission / sanction and clearance, hence the suit was filed. During the intervening period some more development took place. One Living Media India Limited, (in short LMI), said to be a group company of the Appellant M/s Thomson Press (India) Limited offered the defendant-respondent to take the suit premises on lease, some time in the year 1988. The defendants Sawhneys' assured the LMI that lease would be granted after M/s Peerless vacated the suit property. LMI, accordingly, sent a cheque to the defendants-Sawhneys' as earnest money in

respect of the lease. However, when Sawhneys' wanted to resile from the agreed terms with LMI, a suit was filed by LMI being Suit No. 2872 of 1990 against Sawhneys' in Delhi High Court for perpetual injunction restraining the Sawhneys' from parting with possession of the premises to any third party. The High Court passed the restrain order on 19.09.1990 with regard to the suit property and appointed a commissioner to report as to who is in possession of suit premises. igh Court for perpetual injunction restraining theSawhH It appears that the aforesaid suit filed by LMI was compromised and an order was passed on 08.04.1991 whereby, as per the compromise, the suit property was leased out by defendant-Sawhneys' in favour of LMI and possession of the property was given to it.

5. On 01.11.1991, the plaintiff-M/s Nanak Builders in the meantime filed a suit against the defendant-respondent Sawhneys' being suit no. 3426/1991 for specific performance of agreement to sell dated 29.05.1986. In the said suit pursuant to summons issued against the defendants– Sawhneys' one Mr. Raj Panjwani, Advocate accepted notice on behalf of Sawhneys' and stated before the Court that possession of the flat in question is not with the defendants, rather with M/s LMI which delivered to them by virtue of the lease. Mr. Panjwani further stated that till disposal of the suit the property in question would not be transferred or alienated by the defendants. The defendants- Sawhneys' also filed a written statement in the said suit. It appears that the defendants-Sawhneys' took loan from Vijaya Bank and to secure the loan, equitable mortgage was created in respect of the suit property. In 1977 a suit was filed by the Bank in Delhi High Court for recovery and redemption of the mortgaged property. The said suit was decreed on 14.10.1998 and recovery certificate was issued by DRT, Delhi. LMI, a group of the appellant Company intervened and settled the decree by agreeing to deposit the loan amount of Rs.1.48 crores. The LMI cleared all the dues, income tax liability etc., of Sawhneys' for sale of the property in favour of LMI and its associates. Finally, in between 31.01.2001 and 03.04.2001 five sale deeds were executed by defendants-Sawhneys' in favour of the present appellant herein M/s Thomson Press India Limited. On the basis of those sale deeds the appellant moved an application under Order 1 Rule 10 CPC for impleadment as defendants in a suit for specific performance filed by Respondent No.1 herein M/s Nanak Builders and Investors Pvt. Ltd.

6. The learned Single Judge of the Delhi High Court after hearing the parties dismissed the application on the ground that there was an injunction order passed way back on 04.11.1991 in the suit for specific performance restraining the defendants-Sawhneys' from transferring or alienating the suit property passed, the purported sale deeds executed by the defendants in favour of the appellant was in violation of the undertaking given by the respondents which was in the nature of injunction. Aggrieved by the said order, the appellant filed an appeal being FAO No.295 of 2008 which was heard by a Division Bench. The Division Bench affirmed the order of the Single Judge and held that in view of the injunction in the form of undertaking given by the respondents-Sawhneys' and recorded in the suit proceedings, how the property could be purchased by the appellants in the year 2008. The appellant aggrieved by the aforesaid orders filed this Special Leave Petition.

7. Mr. Sunil Gupta, learned senior counsel appearing for the appellant assailed the impugned orders as being illegal, erroneous in law and without jurisdiction. Learned senior counsel firstly contended

that the appellant being the purchaser of the suit property is a necessary and proper party for the complete and effective adjudication of the suit. According to him, the denial of impleadment will be contrary to the principles governing Order 1 Rule 10 (2) of the CPC though he submitted that impleadment as a party is not a matter of right but a matter of judicial discretion to be exercised in favour of a necessary and proper party. Ld. Senior counsel further submitted that where a subsequent purchaser has purchased a suit property and is deriving its title through the same vendor then he would be a necessary party provided it has purchased with or without notice of the prior contract. He further submitted that after one transaction a pendency of the suit arising there from, Section 52 of the Transfer of Property Act does not prohibit the subsequent transaction of transfer of property nor even declares the same to be null and void. Ld. Senior counsel, however, has not disputed the legal proposition that the court would be justified in denying impleadment at the instance of the applicant who has entered a subsequent transaction knowing that there is a court injunction in a pending suit restraining and prohibiting further transaction or alienation of the property. Ld. Senior counsel put heavy reliance on the decisions of the Supreme Court in Kasturi v. Iyyamperumal & Ors. 2005(6) SCC 733, for the proposition that an application by the subsequent purchaser for impleadment in a suit for specific performance by a prior transferee does not alter the nature and character of the suit and such a transferee has a right and interest to be protected and deserves to be impleaded in the suit.

8. Mr. Gupta, strenuously argued that High Court has not considered the question whether the appellant-purchaser had any knowledge of the order of injunction dated 04.11.1991 before entering the sale transaction in 2001. He has submitted that even assuming that Sawhneys' had such a knowledge, the same cannot be held as an objection to the exercise of judicial discretion in favour of the appellant being impleaded in the suit on the application of the appellant itself.

9. Per contra, Mr. Mahender Rana, learned counsel appearing for Respondent No.1 firstly contended that the suit is at the stage of final hearing and almost all the witnesses have been examined and at this stage the petition for impleadment cannot be and shall not be allowed. Ld. Counsel drew our attention to the legal notice dated 24.06.1990 and the notice dated 12.02.1990 published in the newspaper and submitted that not only the Sawhneys' but the appellant and its sister concern had full notice and knowledge of the pendency of the suit and the order of injunction on the basis of the undertaking given by Sawhneys' that the suit property shall not be assigned or alienated during the pendency of the suit. Learned counsel further contended that as a matter of fact the vendor Sawhneys' had committed fraud by incorporating in the sale deed that there was no agreement or any injunction passed in any suit or proceedings. In that view of the matter the application for impleadment has been rightly rejected by the High Court. He placed reliance on Vidhur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd. & Ors. 2012 (8) SCC 384 and Surjit Singh and Others v. Harbans Singh and Others (1995) 6 SCC 50.

10. Before discussing the decision of the Supreme Court relied upon by the parties, we would like to highlight some of the important facts and developments in the case which are not disputed by the parties.

11. As noted above, plaintiff-respondent No.1 filed the suit for specific performance on 01.11.1991 against the defendants Sawhneys for the specific performance of the agreements dated 29.05.1986. In the said suit, the defendants Sawhneys through Mr. Raj Panjwani, Advocate accepted summons on their behalf and filed vakalatnama. The said Advocate Mr. Panjwani, inter-alia, stated before the Court that the defendants would not transfer or alienate the flat in question. The order dated 04.11.1991 was incorporated in the order sheet as under:

> "Mr. Panjwani accepts notice. Mr. Panjwani states that the possession of the flat in question is not with the defendants. The possession is with M/s. Living Media India Limited which was delivered to them under the orders of this Court. Mr. Panjwani states that till the disposal of this application the defendants would not transfer or alienate the flat in question. Let the reply be filed within 6 weeks with advance copy to the counsel for the plaintiff, who may file the rejoinder within 2 weeks thereafter. List this I.A. for disposal on 10.3.1992."

12. It is also not in dispute that before the institution of the suit the plaintiff-respondent got a notice published in the newspaper on 12.02.1990 in Hindustan Times, Delhi Edition. When this came to the notice of the appellant, the sister concern of the appellant, namely, M/s. Living Media India Limited sent a legal notice to the defendants Sawhneys' dated 24.06.1990 and called upon him to execute the lease deed in respect of the suit property in terms of the agreement. In the said notice dated 24.06.1990 the sister concern of the appellant in paragraph 8 stated as under:

> "That a Public Notice appeared in the Hindustan Times Delhi Edition on 12.2.1990. As per this notice one M/s Nanak Buildings and Investor Pvt.Ltd. claim that you have entered into an Agreement to sell the premises in question to them. A copy of this notice is being endorsed to their counsel mentioned in the Public Notice. My client further learns that you have approached a number of property brokers also for the disposal of the property."

13. The question, therefore, that falls for consideration is as to whether if the appellant who is the transferee pendente lite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendants Sawhneys'.

14. Before coming to the question involved in the case, we would like to discuss the decisions of this Court relied upon by the parties.

15. In the case of Anil Kumar Singh vs. Shivnath Mishra alias Gadasa Guru (1995) 3 SCC 147, in a suit for specific performance of contract a petition was filed under Order 6 Rule 17 CPC seeking leave to amend the plaint by impleading the respondent as party defendant in the suit. The contention of the petitioner was that the vendor had colluded with his sons and wife and obtained a collusive decree in a suit under the U.P. Zamindari Abolition and Land Reforms Act. It was contended that by

> operation of law they became the co-sharers of the property to be conveyed under the Agreement and, therefore, he is a necessary party. The trial court dismissed the petition and on revision the High Court of Allahabad affirmed the order. In an appeal this Court, refused to interfere with the order and observed.

"In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claim made in the suit." "The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the question involved in the suit. The question before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance." "Sub-rule(2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."

16. In the case of Surjit Singh (Supra) a similar question arose for consideration before this Court. In that case, on the death of one Janak Singh, being the head of the family a suit for partition and separate possession was filed by and between the parties. A preliminary decree was passed and while proceeding for final decree was pending, the trial court passed an order restraining all the parties from alienating or otherwise transferring in any manner any part of the property involved in the suit. In spite of the aforesaid order one of the party assigned the right under the preliminary decree involving wife of his lawyer. On the basis of the assigned deed the assignee made an application under Order 22 Rule 10 CPC for impleadment as party to the proceeding. The petition was allowed by the trial court and affirmed in appeal by the Additional District Judge and then in revision by the High Court. The matter came before this Court allowing the appeal and set aside the orders passed by the courts below. This Court observed :-

> "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. 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 what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 CPC."

17. In the case of Savitri Devi v. District Judge, Gorakhpur and Others (1999) 2 SCC 577, a 3 Judges' Bench of this Court considered a similar question under Order 1 Rule 10 CPC. The fact of the case was that the appellant filed a suit for maintenance and for creation of charge over the ancestral property. She also applied for an interim order of injunction restraining her sons from alienating the property during the pendency of the suit. But a vakalatnama was filed on behalf of the defendants and 4th defendant also filed an affidavit purporting to be on behalf of the defendants, expressing their concern that during the pendency of the case the suit property will not be sold. In the light of consent of the counsel the Court passed an order on 18.08.1992 directing the parties not to transfer the disputed property till the disposal of the suit. In spite of the aforesaid order one of the defendants sold 1/4th share of the land to the 3rd respondent and 1/4th share in another land to the 4th respondent on 19.08.1992 and further sold 1/4th share to the 5th respondent. On the basis of this transfer the transferee-Respondent Nos.3- 5 filed an application under Order 1 Rule 10 CPC for impleading them as parties to the suit. The application was allowed at all stages. This court noticed the relevant facts which has been incorporated in paragraph 4 of the decision which is reproduced hereunder :-

> "The trial court passed a detailed order on 14-7-1997 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 18-8-1992. The trial court has also referred to an application under Section 340 CrPC filed by the first defendant and observed that the same had been dismissed by order dated 20-12-1992. There is also a reference in the order of the trial court in the High Court filed by the plaintiff for quashing orders dated 10-11-1995 and 19-4-1996 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 2-A CPC 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."

18. This Court further noticed the point taken by the appellant based on the principles laid down in Surjit Singh's case (supra). Allowing the application this Court held :-

"The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was a party to the order of injunction made by the Court on 18-8-1992. 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 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 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 a multiplicity of proceedings. In such circumstances, it cannot be said that Respondents 3 to 5 are neither necessary nor proper parties to the suit."

19. While referring Surjit Singh's case this Court noticed that in that case there was no dispute that the assignors and the assignees had knowledge of the order of 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 assignee and the order of impleadment of the assignees as parties was unsustainable.

20. In the case of Vijay Pratap and Others v. Sambhu Saran Sinha and Others (1996) 10 SCC 53 a petition was filed under Order 1 Rule 10 of the CPC in suit for specific performance for impleading him as party in place of his father on the ground that the father during his lifetime alleged to have entered into a compromise. The trial court rejecting the petition held that the petitioners are neither necessary or proper parties to the suit. On revision this Court dismissing the same held as under :-

"The trial court accordingly held that the petitioners are neither necessary nor proper parties to the suit. On revision, the High Court upheld the same. Shri Sanyal, the learned counsel for the petitioners contended that their father had not signed the relinquishment deed and the signatures appended to it were not that of him. The deed of relinquishment said to have been signed by the father of the petitioners was not genuine. These questions are matters to be taken into consideration in the suit

before the relinquishment deed and compromise memo between the other contesting respondents were acted upon and cannot be done in the absence of the petitioners. The share of the petitioners will be affected and, therefore, it would prejudice their right, title and interest in the property. We cannot go into these questions at this stage. The trial court has rightly pointed that the petitioners are necessary and proper parties so long as the alleged relinquishment deed said to have been signed by the deceased father of the petitioners is on record. It may not bind petitioners but whether it is true or valid or binding on them are all questions which in the present suit cannot be gone into. Under those circumstances, the courts below were right in holding that the petitioners are not necessary and proper parties but the remedy is elsewhere. If the petitioners have got any remedy it is open to them to avail of the same according to law."

21. In Kasturi's case (supra) a three Judges' Bench of this Court said that in a suit for specific performance of contract for sale an impleadment petition was filed for addition as party defendant on the ground that the petitioners were claiming not under the vendor but adverse to the title of the vendor. In other words, on the basis of independent title in the suit property the petitioner sought to be added as a necessary party in the suit. Rejecting the petition this Court held as under :-

"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 contract for sale. For deciding the question who is a proper party in the 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) 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) .....

"Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos. 1 and 4 to 11 are not necessary parties effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos. 2 and 3. In the case of Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru, 1995 (3) SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at paragraph 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

"Since the respondent is not a party to the agreement for sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party." (Emphasis Supplied)

22. In the case of Vidhur Impex (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:

"Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

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."

23. It would also be worth to discuss some of the relevant laws in order to appreciate the case on hand. Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. Section 52 reads 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.
>
> [Explanation – For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

24. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. Discussing the principles of lis pendens, the Privy Council in the case of Gouri Dutt Maharaj v. Sukur Mohammed & Ors. AIR (35) 1948, observed as under:

> "The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered."

25. In the case of Kedar Nath Lal & Anr. v. Ganesh Ram & Ors. AIR 1970 SC 1717, this Court referred the earlier decision (1967 (2) SCR

18) and observed:

> "The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so it must bind the person driving his right, title and interest from or through him. This principle is well illustrated in Radhamadhub Holder vs. Monohar 15 I.A. 97 where the facts were almost similar to those in the instant case. It is true that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well-established that the principle of lis pendens applies to such alienations.(See Nilkant v. Suresh Chandra 12 I.A.171 and Moti Lal v. Karrab-ul-Din 24 I.A.170."

26. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in the case of Rajender Singh & Ors. v. Santa Singh & Ors. AIR 1973 SC 2537 and Their Lordship with approval of the principles laid down in 1973 (1) SCR 139 reiterated:

> "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 of 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."

27. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 which empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. Order 1 Rule 10 reads as under:

> "10. Suit in name of wrong plaintiff.-
>
> (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms a the Court thinks just.
>
> (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.
>
> (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
>
> (4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
>
> (5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

28. From the bare reading of the aforesaid provision, it is manifest 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 a person who is a either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.

29. Considering the aforesaid provisions, this Court in the case of Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors. 1992 (2) SCC 524 held as under:

> "It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has

an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry,J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin,J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

30. At this juncture, we would also like to refer Section 19 of the Specific Relief Act which reads as under:

"19. Relief against parties and persons claiming under them by subsequent title. – Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

31. From the bare reading of the aforesaid provision, it is manifest 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 makes it very clear that a suit for specific performance cannot be enforced against a person who is a transferee from the vendor for valuable consideration and without notice of the original contract which is sought to be enforced in the suit.

32. In the light of the aforesaid discussion both on facts and law, we shall now examine some of the relevant facts in order to come to right conclusion.

33. As noticed above, even before the institution of suit for specific performance when the plaintiff came to know about the activities of the Sawhneys' to deal with the property, a public notice was published at the instance of the plaintiff in a newspaper "The Hindustan Times" dated 12.02.1990 (Delhi Edn.) informing the public in general about the agreement with the plaintiffs. In response to the said notice the sister concern of the appellant M/s Living Media India Limited served a legal notice on the defendants- Sawhneys' dated 24.06.1990 whereby he has referred the 'agreement to sell' entered into between the plaintiffs and the defendants- Sawhneys'.

34. Even after the institution of the suit, the counsel who appeared for the defendants-Sawhneys' gave an undertaking not to transfer and alienate the suit property. Notwithstanding the order passed by the Court regarding the undertaking given on behalf of the defendants- Sawhneys', and having full notice and knowledge of all these facts, the sister concern of the appellant namely Living Media India Ltd. entered into series of transaction and finally the appellant M/s. Thomson Press got a sale deed executed in their favour by Sawhneys' in respect of suit property.

35. Taking into consideration all these facts, we have no hesitation in holding that the appellant entered into a clandestine transaction with the defendants-Sawhneys' and got the property transferred in their favour. Hence the appellant – M/s Thomson Press cannot be held to be a bonafide purchaser, without notice.

36. On perusal of the two orders passed by the single judge and the Division Bench of the High Court, it reveals that the High Court has not gone into the question as to whether if a person who purchases the suit property in violation of the order of injunction, and having sufficient notice and knowledge of the Agreement, need to be added as party for passing an effective decree in the suit.

37. As discussed above, a decree for specific performance of a contract may be enforced against a person claimed under the plaintiff, and title acquired subsequent to the contract. There is no dispute that such transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the Transfer of Property Act and the restrain order passed by the Court.

38. The aforesaid question was considered by the Calcutta High Court in the case of Kafiladdin and others vs. Samiraddin and others, AIR 1931 Calcutta 67 where Lordship referred the English Law on

this point and quoted one of the passage of the Book authored by Dart, on "Vendors and Purchasers" Edn.8, Vol.2, which reads as under :-

> "Equity will enforce specific performance of the contract for sale against the vendor himself and against all persons claiming under him by a title arising subsequently to the contract except purchaser for valuable consideration who have paid their money and taken a conveyance without notice to the original contract." Discussing elaborately, the Court finally observed:-
>
> "The statement of the law is exactly what is meant by the first two clauses of S.27, Specific Relief Act. It is not necessary to refer to the English cases in which decrees have been passed against both the contracting party and the subsequent purchaser. It is enough to mention some of them : Daniels v. Davison (2), Potters v. Sanders (3), Lightfoot v. Heron(4). The question did not pertinently arise in any reported case in India; but decrees in case of specific performance of contract have been passed in several cases in different forms. In Chunder Kanta Roy v. Krishna Sundar Roy (5) the decree passed against the contracting party only was upheld. So it was in Kannan v. Krishan (6). In Himmatlal Motilal v. Basudeb(7) the decree passed against the contracting defendant and the subsequent purchaser was adopted. In Gangaram v. Laxman(9) the suit was by the subsequent purchaser and the decree was that he should convey the property to the person holding the prior agreement to sale. It would appear that the procedure adopted in passing decrees in such cases is not uniform. But it is proper that English procedure supported by the Specific Relief Act should be adopted. The apparent reasoning is that unless both the contracting party and the subsequent purchaser join in the conveyance it is possible that subsequently difficulties may arise with regard to the plaintiff's title."

39. The Supreme Court referred the aforementioned decision of the Calcutta High Court in the case of Durga Prasad and Another v. Deep Chand and others AIR (1954) SC 75, and finally held:-

> "In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special convenants made between plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in – Kafiladdin v. Samiraddin, AIR 1931 Cal 67 (C) and appears to be the English practice. See Fry on Specific Performance, 6th Ed. Page 90, paragraph 207; also – 'Potter v. Sanders', (1846) 67 ER. We direct accordingly."

40. Again in the case of Ramesh Chandra v. Chunil Lal (1971) SC 1238, this Court referred their earlier decision and observed:-

> "It is common ground that the plot in dispute has been transferred by the respondents and therefore the proper form of the decree would be the same as

> indicated at page 369 in Lala Durga Prasad v. Lala Deep Chand, 1954 SCR 360 = (AIR 1954 SC 75) viz., "to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff". We order accordingly. The decree of the courts below is hereby set aside and the appeal is allowed with costs in this court and the High Court."

41. This Court again in the case of Dwarka Prasad Singh and others vs. Harikant Prasad Singh and others (1973) SC 655 subscribed its earlier view and held that in a suit for specific performance against a person with notice of a prior agreement of sale is a necessary party.

42. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside.

43. Before parting with the order, it is clarified that the appellant after impledment as party-defendant shall be permitted to take all such defences which are available to the vendor Sawhneys' as the appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit.

.....J. (T.S. Thakur) .....J. (M.Y.Eqbal) New Delhi February 21, 2013 IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 1518 OF 2013 (Arising out of S.L.P (Civil) No.24159 of 2009) Thomson Press (India) Ltd. .... Appellant (s) Vs. Nanak Builders & Investors P. Ltd. & Ors. ....Respondent (s) J U D G M E N T T.S. Thakur, J.

I have had the advantage of going through the order proposed by my Esteemed Brother M.Y. Eqbal, J. While I entirely agree with the conclusion that the appellant ought to be added as a party-defendant to the suit, I wish to add a few lines of my own.

There are three distinct conclusions which have been drawn by Eqbal, J. in the judgment proposed by his Lordship. The first and foremost is that the appellant was aware of the "agreement to sell" between the plaintiff and the defendants in the suit. Publication of a notice in the Hindustan Times, Delhi Edition, and the legal notice which Living Media India Limited, appellant's sister concern, sent to the defendants indeed left no manner of doubt that the appellant was aware of a pre-existing agreement to sell between the plaintiff and the defendants. It is also beyond dispute that the sale of the suit property in favour of the appellant was in breach of a specific order of injunction passed by the trial Court. As a matter of fact, the sale deeds executed by the defendants falsely claimed that there was no impediment in their selling the property to the appellant even though such an impediment in the form of a restraint order did actually exist forbidding the defendants from alienating the suit property. The High Court was in that view justified in holding that the sale in favour of the appellant was a clandestine transaction which finding has been rightly affirmed in the

order proposed by my Esteemed Brother, and if I may say so with great respect for good and valid reasons.

In the light of the above finding it is futile to deny that the specific performance prayed for by the plaintiff was and continues to be enforceable not only against the original owner defendants but also against the appellant their transferee. Sale of immovable property in the teeth of an earlier agreement to sell is immune from specific performance of an earlier contract of sale only if the transferee has acquired the title for valuable consideration, in good faith and without notice of the original contract. That is evident from Section 19(b) of the Specific Relief Act which is to the following effect:

> "19.Relief against parties and persons claiming under them by subsequent title – Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against –
>
> (a) either party thereto;
>
> (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
>
> (c) xxxxxxxx
>
> (d) xxxxxxxx
>
> (e) xxxxxxxx There is thus no gainsaying that the appellant was not protected against specific performance of the contract in favour of the plaintiff, for even though the transfer in favour of the appellant was for valuable consideration it was not in good faith nor was it without notice of the original contract.

The second aspect which the proposed judgment succinctly deals with is the effect of a sale pendete lite. The legal position in this regard is also fairly well settled. A transfer pendete lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal & Ors. v. B. Shama Rao & Ors. AIR 1856 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." 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." The decision of this Court in A. Nawab John & Ors. v. V.N. Subramanyam (2012) 7 SCC 738 is a recent reminder of the principle of law enunciated in the earlier decisions. This Court in that case summed up the legal position thus:

"18 .....The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject- matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." We may finally refer to the decision of this Court in Jayaram Mudaliar v. Ayyaswami and Ors. (1972) 2 SCC 200 in which were extracted with approval observations made on the doctrine of lis pendens in "Commentaries of Laws of Scotland, by Bell". This Court said:

"43……..Bell, in his commentaries on the Laws of Scotland said that it was grounded on the maxim: "Pendente lite nibil innovandum". He observed:

It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced." 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.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendete lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In Khemchand Shanker Choudhary v. Vishnu Hari Patil (1983) 1 SCC 18, this Court held that the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding. Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:

"6... Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is

concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. 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. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out." (emphasis supplied) To the same effect is the decision of this Court in Amit Kumar Shaw v. Farida Khatoon (2005) 11 SCC 403 where this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. This Court observed:

"16... The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. 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 22 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 the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case" To the same effect is the decision of this Court in Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (deceased) through his Chela Shiama Dass, (1976) 1 SCC 103.

To sum up:

> 1) The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit. (2) The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein. (3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.
>
> (4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

With the above additions, I agree with the order proposed by my Esteemed Brother, M.Y. Eqbal, J. that this appeal be allowed and the appellant added as party defendant to the suit in question.

.....J. (T.S. Thakur) New Delhi February 21, 2013