

**Yogesh Goyanka**

v.

**Govind & Ors.**

(Civil Appeal No. 7305 of 2024)

10 July 2024

**[Vikram Nath and Satish Chandra Sharma\*, JJ.]**

### **Issue for Consideration**

Appellant, *pendente lite* purchaser of the Subject Land, filed impleadment application before the District Judge (ADJ) under Order 1 Rule 10, CPC, which was dismissed. The order was upheld by the High Court. Whether Appellant, who undisputedly had notice of the pending litigation, was not entitled to impleadment as he was not a *bona fide* purchaser.

### **Headnotes<sup>†</sup>**

**Transfer of Property Act, 1882 – s.52 – Doctrine of *lis pendens* – Impleadment of transferee *pendente lite* who undisputedly had notice of the pending litigation – If barred – Code of Civil Procedure – Order 1 Rule 10.**

**Held:** 1. There is no bar to the impleadment of transferees *pendente lite* with notice – On facts, the mere fact that the registered sale deed (RSD) in question was executed during the pendency of the Underlying Suit does not automatically render it null and void – The law on impleadment of subsequent transferees, as established by the Supreme Court has evolved in a manner that liberally enables subsequent transferees to protect their interests in recognition of the possibility that the transferor *pendente lite* may not defend the title or may collude with the plaintiff therein – Misplaced reliance of ADJ on judgment of this Court in Bibi Zubaida – The only principle emerging from Bibi Zubaida is that transferees *pendente lite* cannot seek impleadment as a matter of right – However it does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court – Permitting the impleadment of a transferee *pendente lite* is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests

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especially when the transferor fails to defend the suit or where there is a possibility of collusion [Paras 17-19].

2. In the particular facts and circumstances of this case, there is a possibility of collusion between the Respondents – It is also curious that the claim of non-payment of consideration by the Appellant was made for the first time before this Court – Appellant has a registered sale deed in his favor and has therefore seemingly acquired an interest in the Subject Land – Whether or not the consideration was paid, is a disputed question of fact that shall be determined by the Trial Court – Considering the totality of the circumstances, including the fact that the trial has not progressed significantly, the Appellant, in the interest of justice, is entitled to impleadment in the Underlying Suit in order to protect his interests, if any, in the Subject Land – Appellant directed to be added as a party-defendant in the Underlying Suit. [Paras 20, 21, 22]

#### **Transfer of Property Act, 1882 – s.52 – Doctrine of *lis pendens* – Discussed.**

**Held:** The doctrine of *lis pendens* as provided u/s.52 of the Act does not render all transfers pendente lite to be void ab-initio – It merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder. [Para 16]

#### **Case Law Cited**

*Bibi Zubaida Khatoon v. Nabi Hassan Saheb & Anr.* [\[2003\] Supp. 5 SCR 290](#) : (2004) 1 SCC 191 – Distinguished.

*Thomson Press v. Nanak Builders* [\[2013\] 2 SCR 74](#) : (2015) 5 SCC 397; *Amit Kumar Shaw v. Farida Khatoon* [\[2005\] 3 SCR 509](#) : (2005) 11 SCC 403; *A. Nawab John v. V.N. Subramaniyam* [\[2012\] 6 SCR 369](#) : (2012) 7 SCC 738 – Referred to.

#### **List of Acts**

Transfer of Property Act, 1882; Code of Civil Procedure, 1908.

#### **List of Keywords**

Suit for permanent injunction and declaration; Release Deeds; pendente lite purchasers; Doctrine of *lis pendens*; Impleadment of a transferee pendente lite; Section 52 of TP Act; bona fide purchasers; Temporary injunction; Unpaid consideration.

**Digital Supreme Court Reports****Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7305 of 2024

From the Judgment and Order dated 21.01.2022 of the High Court of Judicature for Rajasthan at Jaipur in SBCWP No. 17887 of 2019

**Appearances for Parties**

C.A Sundaram, Sr. Adv., Abhishek Gupta, Mrs. Rohini Musa, Jafar Inayat, Kuldeep Yadav, Advs. for the Appellant.

Huzefa Ahemdi, V.K. Shukla, Sr. Adv., Anuj Bhandari, Rajat Gupta, Harikumar V., Anupam Mishra, Govind R, Mrs. S Krishna, Ms. Rajnandini, Abhisar Bhanu, Ms. Megha Karnwal, Anupam Kishore Sinha, Advs. for the Respondents.

**Judgment / Order of the Supreme Court****Judgment**

**Satish Chandra Sharma, J.**

1. Leave granted.
2. The present appeal arises out of judgment dated 21.01.2022 passed by the High Court of Judicature for Rajasthan in S.B. Civil Writ Petition No. 17887 of 2019 whereby the writ petition preferred by the Appellant herein under Article 227 of the Constitution of India was dismissed (the '**Impugned Order**'). The Appellant approached the High Court on being aggrieved by the dismissal of his impleadment application under Order 1 Rule 10, Code of Civil Procedure, 1908 (the '**CPC**') *vide* order dated 10.10.2019 passed by the Ld. Additional District Judge No. 1, Hindaun City (the '**ADJ**').

**Brief Facts:**

3. The Appellant before us, along with the proforma Respondents herein purchased farming land being Khasra No. 5896, 5897, 5898, 5936 and 5895 admeasuring 2.38 hectare at Hinduan City, Rajasthan (the '**Subject Land**') from Respondent No. 21 *vide* registered sale deed dated 28.09.2018 (the '**RSD**') for a collective consideration of Rs. 1,51,65,360/- Admittedly, the RSD contained an explicit declaration to the effect that there were cases pending in the Court of the Ld. SDM and in the court of Ld. ADJ, Hindaun City, relating to the Subject Land.

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4. The Subject Land originally belonged to Respondent Nos. 1-17 (the '**Plaintiffs**') and was released in favor of Respondent Nos. 18-20 (the '**Defendants**') *vide* release deeds dated 11.08.2006 and 31.01.2007 (the '**Release Deeds**'). Thereafter, on the strength of the Release Deeds, the Subject Land was sold to Respondent No. 21 by the Defendants *vide* registered sale deed dated 26.04.2007 and the revenue records were mutated to reflect the name of Respondent No. 21. It is pertinent to note that the Plaintiffs and the Defendants are all relatives, having a common ancestor namely, one Mr. Nathua.
5. The events giving rise to the present appeal began on 03.01.2018 when the Plaintiffs filed Suit No. 1 of 2018 in the court of the ADJ, against the Defendants and Respondent No. 21 (hereinafter collectively referred to as the '**Original Defendants**') seeking permanent injunction and a declaration to the effect that the Release Deeds and the sale deed dated 26.04.2007 are null and void (the '**Underlying Suit**').
6. Admittedly, after the issuance of notice in the Underlying Suit, Respondent No. 21 entered appearance before the ADJ on 11.01.2018 and hence knowingly executed the RSD in favor of the Appellant *pendente lite*. Thereafter, on 25.01.2019, the ADJ granted a temporary injunction in favor of the Plaintiffs.
7. On becoming aware of the temporary injunction, the Appellant, along with the other *pendente lite* purchasers of the Subject Land filed an impleadment application on 13.02.2019 before the ADJ under Order 1 Rule 10, CPC. *Vide* order dated 10.10.2019, the application was dismissed by the ADJ holding that no need arises to implead the applicants therein as (i) permission of the Court was not sought prior to the sale; and (ii) more importantly, they were not *bona fide* purchasers as they were wholly cognizant of the Underlying Suit prior to their purchase. The ADJ placed reliance on the judgment of this Court in *Bibi Zubaida Khatoon vs. Nabi Hassan Saheb & Anr* (2004) 1 SCC 191.
8. Thereafter, the Appellant alone approached the High Court under Article 227 of the Constitution of India challenging the order of the ADJ. *Vide* the Impugned Order, the High Court held that the impleadment application was untenable as the RSD itself was a nullity by virtue of being hit by the doctrine of *lis pendens* as provided under Section 52 of the Transfer of Property Act, 1882 (the '**Act**').

**Digital Supreme Court Reports****Submissions & Analysis:**

9. Mr. C.A. Sundaram, Learned Senior Counsel for the Appellant forcefully contended before us that the Appellant after paying the full consideration, obtained a registered sale deed in his favor and is therefore entitled to the protection of his interests in the Subject Land. He argues that impleadment of the Appellant in the Underlying Suit is necessary as there exists a real possibility of collusion between the Plaintiffs and the Original Defendants. To substantiate his claim, Learned Counsel highlights that the Plaintiffs and the Defendants are relatives. Further, he points to the considerable delay in the filing of the Underlying Suit, about 12 years after the execution of the Release Deeds.
10. On the legal issue, Mr. Sundaram asserts that there is no bar to the impleadment of a transferee *pendente lite*, even when the transferee has prior knowledge of pendency. To buttress his contention, he points to the judgment of this Court in **Thomson Press vs. Nanak Builders**, (2015) 5 SCC 397 wherein, after considering all the previous judgments on the question of impleadment of a transferee *pendente lite*, this Court permitted the impleadment of a transferee in a suit for specific performance, who not only had notice of the pendency but also had knowledge of the injunction prohibiting any transactions relating to the subject property therein.
11. *Per contra* Mr. V.K. Shukla, Learned Senior Counsel for the Plaintiffs contended that the Appellant is not entitled to impleadment as he is not a *bona fide* purchaser. He argued that despite having knowledge of the pendency, no permission was sought from the Court to execute the RSD and hence, the Appellant is not entitled to any relief. To buttress his contention, reliance is placed on **Bibi Zubaida** (supra) wherein this Court held that transferees *pendente lite* cannot, as a matter of right, seek impleadment. In that case, this Court upheld the decision of the trial court rejecting impleadment on grounds that the transferee was not *bona fide* and was only attempting to complicate and delay the pending suit.
12. Mr. Shukla also contends that the judgment of this Court in **Thomson Press** (supra) is entirely distinguishable on facts from the present matter and is hence inapplicable. To that extent, he highlights that contrary to the factual position in **Thomson Press** (supra), in this

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case, the title of the Appellant itself is in question and additionally, the Appellant is not in possession of the Subject Land.

13. Going a little further, Mr. Huzefa Ahmadi, Learned Senior Counsel for Respondent No. 21 contends that the Appellant cannot seek impleadment as he is not even a purchaser of the Subject Land. Mr. Ahmadi submits that out of the 6 cheques issued under the RSD, 2 cheques bounced on 01.10.2018 rendering the consideration unpaid. He highlights that the RSD contains an express clause to the effect that if the payment made under the 6 cheques are not completed, the purchasers will not receive any legal rights over the Subject Land through the RSD. On the question of unpaid consideration, Mr. Sundaram asserts that the entire consideration was paid by the Appellant via RTGS.
14. He further highlights that this contention was neither raised before the ADJ nor the High Court and is merely an afterthought, pointing further to the Appellant's suspicion of collusion between the parties. It is also brought to the notice of this Court that Respondent No. 21 previously filed a suit for declaration to the effect that the RSD is null and void but the same was dismissed in default on 28.02.2020.
15. We have heard the Learned Counsel for the parties and have carefully perused the record.
16. The fulcrum of the dispute herein concerns the impleadment of a transferee *pendente lite* who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of *lis pendens* as provided under Section 52 of the Act does not render all transfers *pendente lite* to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.
17. Therefore, the mere fact that the RSD was executed during the pendency of the Underlying Suit does not automatically render it null and void. On this ground alone, we find the Impugned Order to be wholly erroneous as it employs Section 52 of the Act to nullify the RSD and on that basis, concludes that the impleadment application is untenable. Contrary to this approach of the High Court, the law on impleadment of subsequent transferees, as established by this Court has evolved in a manner that liberally enables subsequent

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transferees to protect their interests in recognition of the possibility that the transferor *pendente lite* may not defend the title or may collude with the plaintiff therein [See the decision of this Court in [Amit Kumar Shaw vs. Farida Khatoon](#), (2005) 11 SCC 403 & [A. Nawab John vs. V.N. Subramaniyam](#), (2012) 7 SCC 738].

18. Similarly, we also find fault with the order of the ADJ and its misplaced reliance on [Bibi Zubaida](#) (supra). The only principle emerging from the judgment of this Court in [Bibi Zubaida](#) (supra) is that transferees *pendente lite* cannot seek impleadment as a matter of right and to that extent, we agree with the ADJ. However, [Bibi Zubaida](#) (supra) does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court. The decision of the Court in [Bibi Zubaida](#) (supra) turns on its own facts; the Court rejected the application for joinder therein noting that the underlying suit was pending since 1983 and upheld the finding of the Trial Court that the subsequent purchaser was not *bona fide* and attempted to complicate and delay the underlying suit. Therefore, the judgment in [Bibi Zubaida](#) (supra), being distinguishable on facts, does not assist the Respondents herein.
19. The Respondents herein assail the impleadment of the Appellant on the ground that he is not a *bona fide* purchaser as he had full knowledge of the pending litigation. While that is the admitted position, there exists no bar to the impleadment of transferees *pendente lite* with notice. Permitting the impleadment of a transferee *pendente lite* is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests especially when the transferor fails to defend the suit or where there is a possibility of collusion.
20. In the particular facts and circumstances of this case, Mr. Sundaram has been able to satisfy this Court on the possibility of collusion between the Respondents. It is a fact that the Plaintiffs and Defendants are relatives. More importantly, Plaintiffs approached the court in the Underlying Suit after a substantial delay of 11 years whereas admittedly, the revenue records were mutated to reflect the name of Respondent No. 21 since 2007. It is also curious that the claim of non-payment of consideration by the Appellant was made for the first time before this Court.

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21. On the other hand, the Appellant has a registered sale deed in his favor and has therefore seemingly acquired an interest in the Subject Land. Whether or not the consideration was paid, is a disputed question of fact that shall be determined by the Trial Court. Therefore, in the considered opinion of this Court, considering the totality of the circumstances in this case, including the fact that the trial has not progressed significantly, the Appellant herein, in the interest of justice, is entitled to impleadment in the Underlying Suit in order to protect his interests, if any, in the Subject Land.
22. In light of the aforesaid, the appeal stands allowed. The Impugned Order and the order of the ADJ dated 10.10.2019 are set aside and the Appellant is directed to be added as a party-defendant in the Underlying Suit.
23. Pending applications, if any, shall also stand disposed of.

*Result of the case:* Appeal allowed.

<sup>†</sup>*Headnotes prepared by:* Bibhuti Bhushan Bose  
*(With assistance from:* Geethika. K, LCRA)