

**AFR**  
**Reserved**

**Civil Misc. Impleadment Application No. 88868 of 2003.**

**And**

**Objection to the order of the Court below dated 8.5.2003.**

**In**

**First Appeal No. 486 of 1980**

Smt. Jamila Khatoon (since deceased) by L.Rs. .... ... Appellant

**Versus**

Shri Ram Niwas Gupta. ... .... Respondent

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**Hon'ble Pradeep Kumar Singh Baghel,J.**

The present impleadment application and the objection to the order of the Court below dated 08<sup>th</sup> May, 2003 have been filed by the subsequent purchasers of the property in dispute, namely, Smt. Seema Makkar, Smt. Geeta Goel, Smt. Laxmi Devi and Smt. Poonam, who are hereinafter referred to as the "applicants".

Heard Sri V.P. Varshney and Ms. Suman Jaiswal, learned counsel for the applicants in support of the aforesaid impleadment application and the objection filed by the applicants, and Sri A.P. Srivastava, learned counsel appearing for the plaintiff-respondent.

The essential facts, insofar as they are relevant for the purpose of the present impleadment application and objection, are that the plaintiff-respondent instituted an original suit in the Court of the Civil Judge, Saharanpur for specific performance of an agreement to sell dated 10<sup>th</sup> January, 1975. The said suit was registered as Original Suit No. 123 of 1978 (Sri Ram Niwas Gupta v. Smt. Jamila Khatoon). The defendant-appellant Smt. Jamila Khatoon, since deceased, was owner of the property in dispute, being Khasra No. 163, admeasuring about 825 square yard, situated at Pathanpura, Ahmad Bag, Saharanpur. The plaintiff-respondent's case was that an agreement to sell was executed on 10<sup>th</sup> January, 1975 by the defendant-appellant Smt. Jamila Khatoon in favour of the plaintiff-respondent to sell the aforesaid plot in dispute for a sale-consideration of Rs.31,350/-. Apart

from the plaintiff, his four cousins Rajendra Kumar, Chandra Prakash, Devendra Kumar and Suresh Chandra were also shown to be beneficiaries of the said agreement. The plaintiff-respondent had advanced a sum of Rs.5000/- to the defendant-appellant. When the sale-deed was not executed in terms of the said agreement, the plaintiff-respondent instituted the above-mentioned suit, which came to be decreed vide judgment and decree dated 06<sup>th</sup> August, 1980 by the Ist Additional District & Sessions Judge, Saharanpur<sup>1</sup>.

Aggrieved by the judgment and decree of the Court below, the defendant-Jamila Khatoon filed the instant first appeal, i.e. First Appeal No. 486 of 1980<sup>2</sup>, before this Court.

During the pendency of the first appeal, defendant Jamila Khatoon died and was substituted by her heirs and legal representatives.

The first appeal was allowed by this Court vide judgment and order dated 09<sup>th</sup> September, 1997, whereby the judgment and decree of the Court below was set aside, suit for specific performance was dismissed and a direction was issued to the defendant to refund the earnest money of Rs.5000/- to the plaintiff with interest @ 9% per annum.

Dissatisfied with the judgment of this Court dated 09<sup>th</sup> September, 1997, the plaintiff-respondent approached the Supreme Court by filing Civil Appeal No. 2246 of 1998, Ram Niwas Gupta v. Mumtaz Hasan and others. The Supreme Court was satisfied that there was a long unexplained delay in filing the suit and the said issue was not adverted to by the High Court. Therefore, the Supreme Court vide its order dated 16<sup>th</sup> January, 2002 allowed the civil appeal, set aside the judgment and order of the High Court and after framing two issues, remitted the matter to the High Court to decide afresh. The direction of the Supreme Court is extracted herein-below:

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1 Court below or trial Court

2 first appeal

"Then the question arises what is the relief which can appropriately be granted to the appellant in this appeal. It is our considered view that the High Court should frame an issue whether there has been unexplained delay on the part of the plaintiff in taking recourse to law in filing suit (though it is filed within the prescribed period of limitation) and whether on facts and in the circumstances of the case such delay defeats the relief of specific performance of the contract for sale of the suit property and call for the finding of the trial court on the issue and on receipt of the same decide the first appeal afresh after giving opportunity of hearing to the parties. It goes without saying that the trial court will give opportunity to the parties to adduce further evidence in the case on the newly framed issue and record its finding on the question.

Accordingly the appeal is allowed, the judgment of the High Court which is under challenge is set aside and the matter is remanded to the High Court for disposal on the terms afore-stated. No costs."

In compliance with the judgment of the Supreme Court, this Court on 24<sup>th</sup> April, 2002 remitted the two issues, as framed by the Supreme Court, to the Court below to return the findings thereon.

In the meantime, the legal heirs of Jamila Khatoon and four cousins of plaintiff-respondent, who are beneficiaries of the agreement to sell and who claimed to have 4/5 share in the property in dispute, executed a sale-deed dated 27<sup>th</sup> March, 2003 for a sale-consideration of Rs.12,00,000/- in favour of the applicants i.e. Smt. Seema Makkar, Smt. Geeta Goel, Smt. Laxmi Devi and Smt. Poonam, in respect of a major portion of the property in dispute and also executed another sale-deed dated 27<sup>th</sup> March, 2003 for the remaining part of the property in dispute in favour of some other person. The photocopies of the sale-deeds are on the record.

From the record it transpires that after transferring the property in dispute in favour of Smt. Seema Makkar and others, the applicants, the heirs of late Smt. Jamila Khatoon did not participate in the proceedings, therefore, the Court below vide order dated 02<sup>nd</sup> April, 2003 passed an order to proceed exparte against them. On 07<sup>th</sup> April, 2003 the vendees Smt. Seema Makkar and three others, the

applicants, filed an application before the trial Court seeking their impleadment in the suit and for recalling the order dated 02<sup>nd</sup> April, 2003. The said application of the applicants was rejected by the trial Court vide its order dated 23<sup>rd</sup> April, 2003.

Against the aforesaid order of the Court below dated 23<sup>rd</sup> April, 2003, the applicants preferred First Appeal From Order No. 1286 of 2003 (Smt. Seema Makkar and others v. Sri Ram Niwas Gupta and others), which is pending before this Court and is listed with the present first appeal for hearing.

On 08<sup>th</sup> May, 2003 the trial Court vide an ex parte order returned its finding on the two issues which were framed by this Court and were remitted to it for recording the findings.

It is against this background that the applicants have filed the present impleadment application for being impleaded as appellants in the first appeal and have also filed an objection to the aforesaid order of the trial Court dated 08<sup>th</sup> May, 2003, whereby the trial Court has returned its findings on two issues.

At the time of hearing, learned counsel appearing for both the parties in their submissions admitted that in view of the fact that the trial Court has returned the findings on the two issues on 08<sup>th</sup> May, 2003, the First Appeal From Order No. 1286 of 2003 filed by the applicants against the order dated 23<sup>rd</sup> April, 2003 has become infructuous. It is relevant to note that as the applicants have filed the present impleadment application and the objection against the findings recorded by the trial Court on the two issues, therefore, learned counsel for the parties have addressed this Court in the first appeal.

The Court below has rejected the impleadment application of the applicants primarily on the ground that the legal heirs of the defendant-appellant have executed the sale-deed during the pendency of the appeal, therefore, it was hit by the provisions of Section 52 of the Transfer of Property Act.

Sri V.P. Varshney and Ms. Suman Jaiswal, learned counsel for the applicants, submit that the applicants were assured by the legal heirs of the defendant-appellant that they would contest the pending legal proceedings, however, subsequently the applicants realized that after transferring the property in dispute in favour of the applicants and others, the heirs of late Smt. Jamila Khatoon lost interest and they did not participate in the proceedings. The trial Court vide its order dated 02<sup>nd</sup> April, 2003 passed an order to proceed with the matter *ex parte* against them. Immediately thereafter, on 07<sup>th</sup> April, 2003 the applicants moved an application before the trial Court seeking their impleadment in the suit and for recalling the order dated 02<sup>nd</sup> April, 2003 to proceed *ex parte*, but the said application of the applicants have been rejected by the trial Court vide order dated 23<sup>rd</sup> April, 2003.

They further urged that on 05<sup>th</sup> July, 2002 Dr. Mumtaz Hasan, legal heir and power of attorney holder of Jamila Khatoon, had appeared before the trial Court and had moved an application for amendment in the case and thereafter he abstained from appearing in the trial Court. In view of the said facts, the applicants were necessary party to protect their interest as they are the bonafide purchasers for a valuable sale consideration. In fact, the applicants had no knowledge earlier about the pendency of the litigation. In their application under Order XXII Rule 10 C.P.C. moved before the trial Court it was stated that all the legal heirs of late Jamila Khatoon had assured the applicants that they will contest the suit. However, on 05<sup>th</sup> April, 2003 when they enquired from Imtiyaz Ali, he did not have any knowledge about the case. However, the enquiry made by the applicants revealed that the Court below has already passed an order on 02<sup>nd</sup> April, 2003 to proceed *ex parte* and has closed the evidence of the plaintiff-respondent and has fixed 04<sup>th</sup> April, 2003 as the next date. On 04<sup>th</sup> April, 2003 the plaintiff had filed the affidavits of his two witnesses. Thus, without any loss of time, the applicants had moved an application for their impleadment, which has been

rejected by the Court below.

It is further urged by the learned counsel for the applicants that a transferee *pendente lite* of an interest in an immovable property is a representative in interest of the party, from whom he had acquired that interest, and he is entitled to be impleaded in the suit or other proceedings and he is entitled to be heard in the matter on the merits of the case. In case he is not heard, there will be no one to prosecute the suit on account of the owner having left with no interest in the property.

In support of their submissions, learned counsel for the applicants have placed reliance on the judgments of the Supreme Court in the cases of **Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and others**<sup>3</sup>, **K.S. Vidyanadam & ors. v. Vairavan**<sup>4</sup>, **A.C. Arulappan v. Smt. Ahalya Naik**<sup>5</sup>, **Dhurandhar Prasad Singh v. Jai Prakash University and others**<sup>6</sup>, **Amit Kumar Shaw and anr. v. Farida Khatoon and anr.**<sup>7</sup>, and, **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others**<sup>8</sup>, and of this Court in **Lal Chandra and others v. District Judge, Jaunpur and others**<sup>9</sup>.

Learned counsel for the respondent has submitted that the applicants have no right to interfere in the proceedings of the first appeal. Since they are not parties to the contract, they are not necessary party or proper party to the litigation. It was urged that the agreement to sell is an executory contract, whereas sale is an executed contract. The trial Court has rightly rejected their application as they have no right in the suit property and the sale-deed dated 27<sup>th</sup> March, 2003 having been executed by incompetent

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3 AIR 1987 SC 2328

4 JT 1997 (2) SC 375

5 AIR 2001 SC 2783

6 2001 (Suppl.) R.D. 342

7 JT 2005 (5) SC 20

8 (2013) 5 SCC 397

9 1994 AWC 848

persons is a nullity in the eyes of law and void ab-initio. It was further submitted that by implication of doctrine of *lis pendens* the transferee cannot deprive the successful plaintiff of the fruit of the decree. It was urged that alienation will in no manner affect the right 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.

Learned counsel for the respondent has placed reliance on the judgments of the Supreme Court in the cases of **Dhanna Singh and others v. Baljinder Kaur and others**<sup>10</sup>, **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (Dead) through L.Rs.**<sup>11</sup>, **Vidur Impex and Traders Private Limited and others v. Tosh Apartments Private Limited and others**<sup>12</sup>, and, **K.N. Aswathnarayana Setty (D) through L.Rs. and others v. State of Karnataka and others**<sup>13</sup>.

I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

The plaintiff-respondent's suit for specific performance was decreed by the trial Court on 06<sup>th</sup> August, 1980, against which the defendant-appellant late Smt. Jamila Khatoon filed the present first appeal before this Court. The first appeal of the defendant was allowed by this Court 09<sup>th</sup> September, 1997 and the judgment and decree of the trial Court was set aside. Aggrieved by the said order of this Court, the plaintiff filed a civil appeal before the Supreme Court. The Supreme Court on 16<sup>th</sup> January, 2002 set aside the order of the High Court and remanded the matter to the High Court to decide afresh. In its order, the Supreme Court has directed the High Court to frame fresh issues to the effect whether there has been unexplained delay on the part of the plaintiff in taking recourse to law in filing the suit and whether on facts of the case the delay defeats the relief of specific performance of the contract for sale of the suit property. The

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10 AIR 1997 SC 3720

11 2003 (Suppl.) RD 686

12 (2012) 8 SCC 384

13 2014 (122) RD 395

Supreme Court has also directed that the trial Court will give opportunity to the parties to adduce further evidence in the case on the newly framed issues and record its findings on the aforesaid questions.

In compliance with the aforesaid order of the Supreme Court, the High Court on 24<sup>th</sup> April, 2002 has framed two specific issues and remanded the matter to the trial Court to return the findings thereon.

After the matter was remanded by the Supreme Court, a major portion of the suit property was transferred in favour of the applicants by a registered sale-deed dated 27<sup>th</sup> March, 2003. In the said sale-deed, four cousins of the plaintiff had also joined.

From the record it emerges that after alienating the property in dispute, the erstwhile owner of the property lost interest in the suit property and they stopped attending the case which led the trial Court to proceed *ex parte* on 02<sup>nd</sup> April, 2003. Thereafter, the applicants within a week i.e. on 07<sup>th</sup> April, 2003 had moved an application to recall the order dated 02<sup>nd</sup> April, 2003 and also for their impleadment in the case. Their application was rejected by the trial Court vide order dated 23<sup>rd</sup> April, 2003 on the ground that the sale-deed was barred by the provisions of Section 52 of the Transfer of Property Act. Thereafter, the Court below vide order dated 08<sup>th</sup> May, 2003 in an *ex parte* manner proceeded to record the findings on the issues remitted by this Court.

In **Thomson Press (India) Limited (supra)** the Supreme Court has considered the same issue. The learned counsel for the applicants has heavily relied on this judgment. The said case has a chequered history, therefore, brief facts of the case are necessary for proper appreciation of the law laid down in the case. In the said case, one Mrs. Lakhbir Sawhney and her son<sup>14</sup> were owner of a building known as "Ojha House"/ "Sawhney Mansion", F-Block, Connaught Place, New Delhi. One M/s. Nanak Builders and Investors

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<sup>14</sup> Sawhneys



(P) Ltd. filed a suit in the High Court of Delhi against Sawhneys for a decree for specific performance of agreement dated 29<sup>th</sup> May, 1980. It was their case that the owners of the property-defendants had entered into an agreement with the plaintiff for the sale of first floor of the said property on a consideration of Rs.50 lakhs, out of which Rs.1 Lakh was paid by the plaintiff to the defendants.

The said property was in the tenancy of M/s. Peerless General Finance Company Ltd. In 1991, M/s. Peerless General Finance Company Ltd. vacated the premises. Immediately after the premises was vacated, the plaintiff requested the owners to receive the balance consideration but the same was avoided by the owners. The plaintiff thereafter got published a public notice in the newspapers The Hindustan Times, New Delhi, so that the defendants-owners/Sawhneys do not sell, transfer or alienate the property to any other person.

In the meantime, one Living Media India Ltd. (LMI), a group company of M/s. Thomson Press (India) Ltd., offered the owners to take the suit property on lease and they had paid earnest money in respect of the said lease. The owners of the property-Sawhneys when resiled from the agreed terms with LMI, the LMI filed a suit against Sawhneys in the High Court of Delhi for perpetual injunction restraining the Sawhneys from transferring the possession of the property to any third party and an interim order was granted by the High Court on 19<sup>th</sup> September, 1990 in respect of the suit property. In the said suit, a compromise was arrived at between LMI and Sawhneys and consequently the suit property was leased out by the defendants-Sawhneys in favour of the LMI.

Sawhneys had taken a loan from a bank and an equitable mortgage was created in respect of the suit property. The bank had filed a suit in 1977 in the High Court of Delhi for recovery and redemption of the mortgaged property. The said suit was decreed on 14<sup>th</sup> October, 1998 and recovery certificate was issued by the Debts

Recovery Tribunal (DRT). The LMI moved an impleadment application and settled the decree by agreeing to deposit the loan amount of Rs.1.48 crores and the LMI cleared all the dues of Sawhneys for sale of the property in their favour. Consequently, five sale-deeds were executed by Sawhneys in favour of M/s. Thomson Press India Limited, a group of LMI. On the basis of those sale-deeds, M/s. Thomson Press moved an application under Order I Rule 10 CPC for impleadment as defendants in the suit for specific performance filed by M/s. Nanak Builders and Investors (P) Ltd..

The High Court of Delhi dismissed the application of Thomson Press on the ground that since there was an injunction order passed way back on 04<sup>th</sup> November, 1991 in the suit for specific performance restraining Sawhneys from transferring or alienating the suit property and since the appellants have purchased the property in violation of the undertaking given by Sawhneys which was in the nature of injunction, they were not proper party. The view taken by the learned Single Judge of the Delhi High Court was affirmed in appeal by a Division Bench of the Delhi High Court. Aggrieved by the said orders, the Thomson Press approached the Supreme Court.

Before the Supreme Court, in the said case, a submission was made on behalf of the purchaser/the appellant therein that the appellant being purchaser of the suit property is a necessary and proper party for complete and effective adjudication of the suit. Rejection of the impleadment application of the subsequent purchaser was contrary to the principles governing Order I Rule 10(2) CPC. It was also urged 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. It was also urged before the Supreme Court that 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.

The Supreme Court held that a decree for specific performance may be enforced against a person who claimed under the defendant, and title acquired subsequent to the contract. Such a sale or transfer is subject to the rider provided under Section 52 of the Transfer of Property Act. In the said case, the Supreme Court followed its earlier decision in **Dwarka Prasad Singh v. Harikant Prasad Singh**<sup>15</sup>. The Supreme Court in paragraphs – 41 to 44 of the judgment, held thus:

“41. The Supreme Court in *Durga Prasad v. Deep Chand*<sup>16</sup> referred to the aforementioned decision of the Calcutta High Court in *Kafiladdin case*<sup>17</sup> and finally held: (*Durga Prasad case*, AIR p. 81, para 42)

“42. 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 covenants made between the 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*, and appears to be the English practice. (See *Fry on Specific Performance*, 6<sup>th</sup> Edn., p. 90, para 207 and also *Potter v. Sanders*<sup>18</sup>.) We direct accordingly.”

42. Again in *R.C. Chandiok v. Chuni Lal Sabharwal*<sup>19</sup> this Court referred to their earlier decision and observed: (SCC p. 146, para 9)

“9. 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 SCR p. 369 in *Durga Prasad v. Deep Chand*<sup>20</sup> 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'. (AIR p. 81, para

15 (1973) 1 SCC 179 : AIR 1973 SC 655

16 AIR 1954 SC 75 : 1954 SCR 360

17 *Kafiladdin v. Samiraddin*, AIR 1931 Cal 67

18 (1846) 6 Hare 1 : 67 ER 1057

19 (1970) 3 SCC 140 : AIR 1971 SC 1238

20 AIR 1954 SC 75 : 1954 SCR 360

42)

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."

43. This Court again in *Dwarka Prasad Singh v. Harikant Prasad Singh*<sup>21</sup> subscribed to 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.

44. 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."

The facts of **Thomson Press (India) Limited (supra)** are somewhat similar to the facts of the present case. In **Thomson Press (India) Limited (supra)** also, the property was purchased even after the restraint order passed by the High Court of Delhi. The Supreme Court held that subsequent purchaser is a necessary party.

In **Amit Kumar Shaw (supra)** the Supreme Court held that the Court has a discretion to make the subsequent purchaser as a party, if his interest in the subject matter of the suit is substantial and not just peripheral. A subsequent purchaser who acquires interest from the owner is vitally interested in the litigation, whether the transfer is of the entire interest, as in some cases owner having no more interest in the property may not properly defend the suit and he may collude with the contesting party. The Supreme Court has also considered the scope of Order XXII Rule 10 CPC and held that under the said provision there is no detailed enquiry contemplated at the stage of granting leave. The Court has only to be *prima facie* satisfied for exercising its discretion in granting leave. The question about existence and validity of the transfer can be considered at the final hearing of the proceedings. At the initial stage, the only requirement is *prima facie* satisfaction. The Supreme Court held as under:

"16. The doctrine of lis pendens applies only where the lis is

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21 (1973) 1 SCC 179 : AIR 1973 SC 655

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, whether 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 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."

What emerge from the aforesaid decisions of the Supreme Court are: (i) a subsequent purchaser is a necessary and proper party; (ii) after sale, the owner can lose interest in litigation, thus it can adversely affect the right of the subsequent purchaser; (iii) Section 52 of the Transfer of Property Act does not prohibit the *bonafide* transfer of the property, it only puts a rider that the subsequent purchaser shall abide the result of the suit; and, (iv) the Court has to be *prima facie* satisfied while exercising its discretion to allow the application, and the other aspects can be considered at the time of hearing.

In view of the above principles, I am of the view that the trial Court without considering the law on the subject has summarily rejected the application of the applicants for impleadment without due application of mind.

The finding of the trial Court that the subsequent transfer was hit by Section 52 of the Transfer of Property Act, is contrary to the law. Thus, the trial Court has misconstrued the scope of Section 52 of

the Transfer of Property Act. The trial Court has also failed to notice that the Supreme Court has directed to decide the relevant issues after hearing both the parties and after permitting them to lead the evidence, therefore, the trial Court was not justified in passing the order to proceed with the suit *ex parte* on 02<sup>nd</sup> April, 2003. The application of the applicants for their impleadment and recall of the order dated 02<sup>nd</sup> April, 2003 was moved within five days i.e. 07<sup>th</sup> April, 2003.

The proper course for the trial Court was to recall the order dated 02<sup>nd</sup> April, 2003, to allow the impleadment of the applicants as party in the case, as in absence of both the plaintiff as well as the applicants the issues framed by the High Court could not have been effectively adjudicated upon, and thereafter to proceed to return the findings after hearing both the sides. From the plain reading of the issues framed by the High Court, on the direction of the Supreme Court, it is evident that the issues need proper determination of fact with regard to the delay in filing the suit. The said issues cannot be determined without proper evidence by both the sides.

Now I will deal with the judgments cited by the learned counsel for the respondent—the plaintiff.

In the case of **Vidur Impex and Traders Private Limited (supra)** M/s. Tosh Apartments Private Limited filed a suit in the High Court of Delhi. In the said case it was found that the application for impleadment filed by the subsequent purchasers lack *bonafide* because they purchased the suit property from the party despite the order of injunction passed by the High Court and there was no tangible explanation for filing the application after a long time-gap of 7 years. The respondent therein could not satisfy the Court about the long time-gap of 7 years and their knowledge about the injunction order issued by the High Court. Moreover, in their favour only an agreement to sell and thereafter sale-deeds were executed and the said sale-deeds were found to be nullity as it was executed after the

injunction granted by the Delhi High Court. In view of the said fact, the said case, as relied upon by the respondent, has no application in the present matter. In the case of **Rambhau Namdeo Gajre (supra)** a suit was filed for the possession of the suit land on the allegation that the owner was wrongfully dispossessed from it. The plaintiff had alleged that he was owner of the suit land, which was his self-acquired property, and his brother has filed a suit for partition and possession of the ancestral property, the suit land along with other lands was left to his share. The issue raised in the said case was in respect of doctrine of part performance enshrined under Section 53-A of the Transfer of Property Act. The issue of doctrine of part performance as contemplated under Section 53-A of the Transfer of Property Act is not involved in the present case, therefore, the facts of the said case are distinguishable.

In **Dhanna Singh (supra)** the defendant had contested the case and pending the suit several opportunities were given but no evidence was adduced by the defendant therein. The Court thereafter passed an order foreclosing the evidence of the defendant on the statement of the counsel that the first defendant was not willing to lead any evidence. At that stage, the subsequent purchaser moved an application for adduction of evidence. In the facts of the said case, the trial Court has rejected the application. The facts of the said case clearly show that several opportunities were given to the defendant and a statement was made that they will not lead any evidence. In the present case, the trial Court has passed an order to proceed *ex parte* on 02<sup>nd</sup> April, 2003 when owner did not appear, but the application was moved by the applicants within five days which has been rejected. Thus, the said case does not help the respondent-plaintiff.

Insofar as **K.N. Aswathnarayana Setty (supra)** is concerned, the said case was in respect of a land of the Land Acquisition Act, 1894. In the said case the land was acquired under

the provisions of the Land Acquisition Act and the owner had transferred the property after the acquisition proceeding. The preliminary notification under Section 4(1) of the Land Acquisition Act was issued in respect of a huge chunk of land admeasuring 15 acres on 06<sup>th</sup> August, 1991 for the benefit of the State Government Houseless Harijan Employees Association (Regd.). On 15<sup>th</sup> May, 1992 a declaration under Section 6 of the Land Acquisition Act was issued. The Government denotified the land from acquisition on 05<sup>th</sup> August, 1993 by issuing notification under Section 48(1) of the Land Acquisition Act. The decision of the State Government to denotify the land was challenged by the beneficiaries and the matter was carried upto the Supreme Court. In the meantime, during pendency of the civil appeal in the Supreme Court, the property was transferred. In that context, the Supreme Court held that at the time of purchasing of the suit land by the petitioners, the matter was *subjudice* before the Supreme Court and if the order of denotification was quashed, it would automatically revive the land acquisition proceedings. In the said facts, the Supreme Court applied the doctrine of *lis pendens* and the Court held that the transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property *pendente lite*. For the said reason, the said case also does not come to the aid of the respondent-plaintiff.

In view of the discussions made above, I am of the considered view that the order of the trial Court dated 23<sup>rd</sup> April, 2003 rejecting the application of the applicants for their impleadment and recall of the order dated 02<sup>nd</sup> April, 2003 to proceed *exparte* is illegal and is liable to be set aside. Accordingly, it is set aside. The impleadment application filed by the applicants before the trial Court needs to be allowed and is allowed for proper adjudication of the issues in the interest of justice.

Consequently, the order dated 08<sup>th</sup> May, 2003 recording findings in compliance with the order of this Court, as directed by the



Supreme Court, is required to be set aside on account of the same having been recorded exparte, which is against the direction of the Supreme Court given in the order dated 16<sup>th</sup> January, 2002 for giving opportunity to the parties to lead the evidence. Hence, the order dated 08<sup>th</sup> May, 2003 passed by the trial Court is set aside. The matter is remitted to the trial Court to give opportunity to the applicants to lead the evidence, if they desire so, and after giving opportunity to both the parties, and to return its findings on both the issues, as framed by this Court, afresh, expeditiously preferably within four months from the date of receipt of the record.

Accordingly, the impleadment application and the objection filed by the applicants are allowed. No order as to costs.

Let the lower court record be sent to the concerned court.

List the appeal after receipt of the findings of the trial Court along with the record.

**Order Date :-** 06<sup>th</sup> November, 2015.  
SKT/-

(Order on Objection)

**Hon'ble Pradeep Kumar Singh Baghel,J.**

The objection is allowed.

For order, see my order of the date passed on the Civil Misc. Impleadment Application No. 88868 of 2003 filed in the present appeal.

Dt.- 06<sup>th</sup> November, 2015.

SKT/-