



2026:AHC-LKO:11621

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 555 of 2026

[A.F.R.]

Mohd. Shakeel

.....Petitioner(s)

Versus

Munni Devi Thru. Legal Heirs Opposite
Party 2 And 3 And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Pramod Kumar, S.Mohd
Kazim, Syed Jamal Ahmad

Counsel for Respondent(s) :

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri S. Mohd Kazim, the learned counsel for the petitioner.
2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of an order dated 13.03.2024 passed by the learned Additional Civil Judge (J.D.), Court No.48, Lucknow in Regular Suit No.973 of 2000 titled Mohd. Shakeel v. Munni Devi whereby an application filed by the third party- Babu Lal (the opposite party No.4 to the petition) has been allowed.
3. The petitioner had filed the aforesaid suit against Munni Devi, mother of the opposite party Nos.2 and 3- Ramesh Kumar and Naresh Kumar, for specific performance of contract. On 23.12.2000, the trial Court had passed an ex-parte order of temporary injunction restraining the defendant from selling the property to any other person and from changing the nature of the property. Thereafter, the suit was decreed *ex-parte* on 30.05.2002.
4. The plaintiff filed Execution Case No.08 of 2002 for execution of the *ex-parte* decree dated 30.05.2002.

5. Prior to filing of the Execution Case, the defendant – judgment debtor Munni Devi had already executed a sale deed dated 26.03.2002 in respect of the property in question in favour of one Qadir Hussain and had handed-over physical possession of the property to the purchaser. The name of purchaser Qadir Hussain was mutated in the revenue records. Qadir Hussain executed a registered sale deed dated 15.02.2005 in respect of the property in question in favour of opposite party No.4 - Babu Lal and handed over possession of the property to the purchaser. The name of opposite party No.4- Babu Lal has been mutated in the revenue records.

6. The plaintiff – decree holder filed an application for impleadment of Qadir Hussain and Babu Lal in execution proceeding which application was allowed by means of an order dated 30.09.2013, and Qadir Hussain and Babu Lal were impleaded in the execution case. The opposite party no. 4 stated that prior to it, he had no knowledge of the execution proceedings.

7. The opposite party no. 4 filed an application for setting aside the ex-parte decree dated 30.05.2002, which application has been allowed by means of an order dated 07.08.2023. Thereafter the opposite party no. 4 requested for his impleadment in the suit.

8. The petitioner – Shakeel Ahmad filed objections against the application *inter alia* stating that the trial Court had passed a temporary injunction order dated 23.12.2000 restraining the defendants from transferring the property. Munni Devi had sold away the property to Qadir Hussain and their Qadir Hussain had sold the property to the opposite party no. 4 in violation of the provision contained in Section 58 of the Transfer of Property Act and the purchaser has no right to seek his impleadment. Regarding impleadment of the opposite party no. 4 in execution proceedings, the plaintiff stated that it was wrongly done by some other Counsel, whereas the newly engaged Counsel of the plaintiff was of a different view. The newly engaged Counsel had moved an application for deletion of the added defendants but the application under Order IX Rule 13 C.P.C. had been allowed. The plaintiff had challenged the order setting aside the ex-parte decree by filing Civil Revision No. 167 of 2023, which was pending in the Court of Additional District Judge, Court No. 9, Lucknow

9. The Trial Court allowed the impleadment application by means of the impugned order dated 13.03.2024 holding that the opposite party No.4 is a transferee pendente lite and he can seek his impleadment keeping in view the statutory provisions contained in Order I Rule 10 (2), Section 146 and Order XXII Rule 10 CPC. The Court also noted that the original defendant and her transferee having sold away the property are not interested in defending the proceedings. In these circumstances, non-impleadment of the opposite party No.4 would adversely affect his interests in the litigation. The Trial Court further held that the question of legality of the sale would be decided in the suit. The trial Court has relied upon the judgment of the Hon'ble Supreme Court in the case of **Amit Kumar Shaw v. Farida Khatoon**: (2005) 11 SCC 403 in which it has been held that a transferee pendente lite is a necessary party to the suit.

10. The petitioner had challenged the aforesaid order by filing Civil Revision No.65 of 2024 which has been dismissed by means of the judgment and order dated 17.11.2025 passed by the learned Additional District Judge, Court No.12, Lucknow and validity of the revisional order has also been challenged by the petitioner.

11. Assailing validity of the aforesaid orders, the learned counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court in the case of **Anil Kumar Singh v. Shivnath Mishra** (1995) 3 SCC 147, **Vijay Pratap v. Sambhu Saran Sinha**: (1996) 10 SCC 53, **Bibi Zubaida Khatoon v. Nabi Hassan Saheb**: (2004) 1 SCC 191 and **Gurmit Singh Bhatia v. Kiran Kant Robinson**: (2020) 13 SCC 773.

12. Section 52 of the Transfer of Property Act provides as follows: -

"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 proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be

made therein, except under the authority of the Court and on such terms as it may impose.

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."

13. Order I Rule 10, C.P.C. provides as follows: -

Order 1 Rule 10

*"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 as 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."

14. Rule 10 of XXII C.P.C. provides as follows: -

"10. 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)."

15. In **Amit Kumar Shaw v. Farida Khatoun**: (2005) 11 SCC 403, the Hon'ble Supreme Court held that: -

"14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

* * *

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 his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in

the matter on the merits of the case."

(Emphasis added)

16. In **Anil Kumar Singh v. Shivnath Mishra**: (1995) 3 SCC 147, the Hon'ble Supreme Court held that: -

"3. Order 22, Rule 10 postulates continuation of suit by or against a person who has, by devolution, assignment or creation, acquired any interest during the pendency of a suit, by leave of the court. The obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit for specific performance, is not obtaining, by assignment or creation or by devolution, an interest. Therefore, Order 22, Rule 10 has no application to this case."

17. In **Vijay Pratap v. Sambhu Saran Sinha**: (1996) 10 SCC 53, the suit was filed for specific performance wherein the father during his lifetime was alleged to have entered into compromise and requested to delete his name from the array of parties as Respondent 1. His name was deleted after his demise. Pending suit before the compromise was recorded, the petitioners sought impleadment under Order 1 Rule 10. The trial court rejected the application holding that to decide right, title and interest of co-plaintiffs in suit property is beyond the scope of this suit and a suit of specific performance of contract can't be turned into a regular title suit and, therefore, the petitioners are not necessary and proper parties under Order 1 Rule 10 CPC. The question of impleadment / substitution of a transferee under Order XXII Rule 10 C.P.C. was not involved in this case.

18. In **Bibi Zubaida Khatoon v. Nabi Hassan Saheb**: (2004) 1 SCC 191, the Hon'ble Supreme Court held that: -

"9. It is not disputed that the present petitioner purchased the property during pendency of the suit and without seeking leave of the court as required by Section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. It is true that when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined as a party to enable him to protect his interest. But in the instant case, the trial court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action of the alienation does not

appear to be bona fide. The trial court saw an attempt on the part of the petitioner to complicate and delay the pending suits."

19. There is nothing in the present case to even prima facie establish that the action of alienation in favour of the opposite party no. 4 is not *bona fide*. In absence of the alienation being held to be not bona fide, the opposite party no. 4 is entitled to be impleaded under the provisions contained in Order XXII Rule 10 C.P.C.

20. In **Gurmit Singh Bhatia v. Kiran Kant Robinson**: (2020) 13 SCC 773, the short question for consideration was, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him? The Hon'ble Supreme Court relied upon a judgment in the case of *Kasturi v. Iyyamperumal*, (2005) 6 SCC 733 wherein it was held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It was further observed and held that two tests are to be satisfied for determining the question as to who is a necessary party. The tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. In a suit for specific performance the first test that can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject-matter involved in the proceedings for specific performance of contract to sell. In a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. The parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. A third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. A third party or a stranger to a contract cannot be added so as to convert a suit of

one character into a suit of different character.

21. In the present case, as the opposite party no. 4 has purchased the property in question through a registered sale deed and presently he is the owner of the property in question, the plaintiff has the right to claim relief against the opposite party no. 4 relating to the subject-matter involved in the proceedings for specific performance of contract to sell and his presence is necessary to adjudicate the controversy involved in the suit. The opposite party no. 4 is not claiming an independent title and possession adverse to the title of the vendor, rather he is claiming the same under a sale deed executed by the vendor. Therefore, he is entitled to be impleaded under Order XXII Rule 10 C.P.C.

22. Regarding the submission of the learned Counsel for the petitioner that the original defendant had executed the sale deed in violation of an order of temporary injunction restraining transfer of the property, suffice it to say that the suit was proceeded with and decreed ex-parte and there is nothing on record to show that the defendant had knowledge of the temporary injunction order. Therefore, it cannot be said that the sale deed had been executed in deliberate violation of the temporary injunction order.

23. Further, the plaintiff himself had filed an application for impleadment of Qadir Hussain and Babu Lal (opposite party no. 4) in the execution proceeding which application was allowed by means of an order dated 30.09.2013. Thereafter the ex-parte decree dated 30.05.2002 was set aside by means of an order dated 07.08.2023 passed upon an application filed by the opposite party no. 4. These facts also provide support to the claim for impleadment of the opposite party no. 4 as a defendant to the suit.

24. The submission of the learned Counsel for the petitioner that it was wrongly done by some other Counsel, whereas the newly engaged Counsel of the plaintiff was of a different view, also does not deserve acceptance, because the mere change of Counsel would not justify a change towards the approach adopted by the party when the case was being conducted by another Counsel.

25. Keeping in view the foregoing discussion, there appears to be no error or illegality in the impugned order dated 13.03.2024 passed by the learned Additional Civil Judge (J.D.), Court No.48,

Lucknow in Regular Suit No.973 of 2000 allowing the application for impleadment filed by Babu Lal - the opposite party No.4 to the petition.

26. The petition lacks merit and the same is hereby **dismissed** at the admission stage.

February 13, 2026

-Amit K-

(Subhash Vidyarthi,J.)