

Chappidi Subbareddy (Died) and ors. Vs. Chappidi Narapureddy and ors.

Chappidi Subbareddy (Died) and ors. Vs. Chappidi Narapureddy and ors.

SooperKanoon Citation : sooperkanoon.com/445105

Court : Andhra Pradesh

Decided On : Nov-29-2005

Reported in : 2006(3)ALD516

Judge : D.S.R. Varma and ; P. Swaroop Reddy, JJ.

Acts : [Transfer of Property Act, 1882](#)- Sections 52

Appeal No. : CRP Nos. 2765 and 2766 of 2005

Appellant : Chappidi Subbareddy (Died) and ors.

Respondent : Chappidi Narapureddy and ors.

Advocate for Def. : S.V. Bhatt, Adv. for the Respondent Nos. 1 to 8

Advocate for Pet/Ap. : Satyanarayana Nimmagadda, Adv.

Judgement :

D.S.R. Varma, J.

1. Heard both sides.

2. In these two revisions, this Court is called upon to answer the doubt expressed by the learned Single Judge as regards the applicability of Section 52 of the [Transfer of Property Act, 1882](#), or Order 1 Rule 10(2) C.P.C. to all suits irrespective of the nature of the suits or whether they are to be confined to certain

types of suits. The learned Judge referred the matter in the light of the views expressed by the Apex Court in Khemchand Shanker Choudhary v. Vishnu Hari Patil : [1983]1SCR898 in Sarvinder Singh v. Dalip Singh : (1996)5SCC539 , and also the view expressed by a learned Single Judge of this Court in Kuna Ramulu v. Kuna Annapurnamma 2002 (3) LS 251.

3. The learned Referring Judge, it appears, having felt that there is some divergence between the views expressed by the apex Court in Khemchand Shanker Choudhary's case (supra), on the one hand, and Sarvinder Singh's case (supra), which was relied on by a learned Single Judge of this Court (T. Ch. Surya Rao, J.,) in Kuna Ramulu's case (supra) on the other, referred the matter to a Division Bench.

4. Facts, in brief, appear to be that the suit was filed for partition, wherein the purchaser pendente lite, intended to come on record by way of making interlocutory applications LA. Nos. 1330 and 1333 of 2002 and contest the suit. Perhaps, I. As were filed by the plaintiff, under Order 1 Rule 10 CPC, to implead the purchaser of the part of the suit property as defendant in the suit. The said applications were dismissed resulting in filing of the present two civil revision petitions by the Legal Representatives of the Plaintiff, since the original plaintiff died during the pendency of the suit.

5. The learned Counsel appearing for the petitioners-plaintiffs placed strong reliance on the judgments of the Apex Court in Khemchand Shanker Choudhary v, Vishnu Hari Patil (supra).

6. On the other hand, the learned Counsel appearing for the respondents-defendants placed strong reliance on Section 52 of the [Transfer of Property Act, 1882](#), the judgment of the apex Court in Sarvinder Singh v. Dalip Singh (supra) and also the judgment of a learned Single Judge of this Court in Kuna Ramulu v. Kuna Annapurnamma (supra), wherein the learned Judge, following the ratio laid down by the apex Court in Sarvinder Singh v. Dalip Singh (supra), held that the proposed parties are not necessary parties since the transaction was hit by Section 52 of the Transfer of Property Act, and the purchasers purchased the property pendente lite. In this connection, it is to be seen that in Khemchand

Shanker Choudhary v. Vishnu Hari Patil (supra), the Apex Court held thus:

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 insofar 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 recognizes 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....

7. In fact, this question, for the first time, had arisen and was considered by a four-Judge Bench of the apex Court in *Saila Bala v. Nirmala Sundari* : [1958]1SCR1287 wherein it was held thus:

In our opinion, the application filed by the appellant falls within Section 146 of the Civil Procedure Code, and she is entitled to be brought on record under that section. Section 146 provides that save as otherwise provided by the Code, any proceeding which can be taken by a person may also be taken by any person claiming under him. It has been held in *Sitharamaswami v. Lakshmi Narasimha* ILR 41 Mad. 510 : AIR 1919 Mad. 755(2)(c), that an appeal is a proceeding for the purpose of this section, and that further the expression 'claiming under' is wide

enough to include cases of devolution and assignment mentioned in Order 22 Rule 10. This decision was quoted with approval by this Court in *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* 1955-1 SCR 1369 : (s) AIR 1955 SC 376 (D), wherein it was held that a transferee of a debt on which a suit was pending was entitled to execute the decree which was subsequently passed therein, under Section 146 of the Civil Procedure Code as a person claiming under the decree-holder, even though an application for execution by him would not lie under Order 21 Rule 16, and it was further observed that the words 'save as otherwise provided' only bared proceedings, which would be obnoxious to some provision of the Code. It would follow from the above authorities that whoever is entitled to be but has not been brought on record under Order 22 Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the Code, and that accordingly the appellant as assignee of the second respondent of the mortgaged properties would have been entitled to prefer an appeal against the judgment of P.B. Mukharji, J....

8. In *Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr.* 2005 (4) ALD 98 (SC) : 2005 (2) LS 45 (SC), the apex Court, while considering the scope of Order 1 Rule 10 and Order 22 Rule 10 of Civil Procedure Code and also Section 52 of the Transfer of Property Act, observed thus:

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 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

(Underlining is our. Emphasis added)

9. The decision of the apex Court in Sarvinder Singh v. Dalip Singh (supra) is referred to by the learned Referring Judge, in addition to the decision rendered by a learned Single Judge of this Court (T. Ch. Surya Rao, J) in Kuna Rarnulu v. Kuna Annapurnamma (supra).

10. In Sarvinder Singh's case (supra) also, the purchasers pendente lite filed a petition under Order 1 Rule 10 C.P.C. The brief facts of that case are required to be noticed by us for better appreciation of the issue. In that case, a 'Will' said to have been executed by one Him Devi in favour of the plaintiff therein, and on the strength of the said 'Will' the suit was filed for declaration and interim relief of ad interim injunction was also sought for. Initially, interim relief of ad interim injunction was granted and subsequently it was vacated. It appears, on the same day of vacation of ad interim injunction, the property in dispute was alienated to third parties. Hence, the said third parties filed an application under Order 1 Rule 10 CPC to come on record. Therefore, the main dispute in that case was with regard to the validity or otherwise of the 'Will' and if that issue is decided the consequential issues would also get decided automatically. While dealing with the said aspect, the apex Court discussed about the aspect as to who is a necessary party and/or who is a proper party, and in the course of discussion Their Lordships held that the main issue is with regard to validity or otherwise of the 'Will' said to have been executed by one Him Devi in favour of the plaintiff therein. Incidentally, it was observed by Their Lordships that the transaction in favour of third parties, who filed the application under Order 1 Rule 10 C.P.C, was hit by the principle of lis pendens, and consequently it was observed that the said purchasers were neither necessary nor proper parties to the suit.

11. The decision of the apex Court in Sarvinder Singh v. Dalip Singh (supra) was taken note of and relied upon by the apex Court in Bibi Zubaida Khatoon v. Nabi Hassan Saheb : AIR 2004 SC173 and it was observed thus:

The decisions cited and relied on behalf of the appellant turned on the facts of each of those cases. They are distinguishable. There is no absolute rule that the transferee pendente lite without leave of the Court should in all cases be allowed to join and contest the pending suits.

(Emphasis added by us)

12. It is to be further noticed that the apex Court in Bibi Zubaida Khatoon 's case (supra) had also taken note of and relied upon its earlier decision in Dhurandhar Prasad Singh v. Jai Prakash University : [2001]3SCR1129 and quoted certain observations from that decision, which are re-extracted hereunder:

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.

Further, it was held by apex Court thus:

Under Rule 10 Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may by leave of the Court, be continued by or against persons upon whom such interest has devolved and this entitle the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the Court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so.

13. A conjoint reading of the decision of the apex Court in Bibi Zubaida Khatoon's case (supra) with the decision of the apex Court in Dhurandhar Prasad Singh's case (supra) would make it clear that actually there is no divergence in the views expressed by the apex Court in those two cases.

14. In our considered view, the view expressed by the apex Court in Sarvinder Singh's case (supra) was in altogether different circumstances and fact-situation. The genesis of the dispute in that case (Sarvinder Singh's case), as already noticed, was the 'Will', and the main and substantial question that had fallen for consideration was the validity or otherwise of the Will and the consequential declaration of title. In those circumstances, Their Lordships of the apex Court, in Sarvinder Singh's case (supra), incidentally went into the further consequential aspect and made the observations with regard to the applicability of Section 52 of the Transfer of Property Act also.

15. Furthermore, in Dhurandhar Prasad Singh's case (supra), the situation is further made clear as to what would happen if leave is not sought by a party aggrieved before seeking impleadment. It was made clear that if a party does not take the leave of the Court, the same would be at his peril, and conducting the case may be improper and still such party would be bound by the result of the litigation. This is the end result if a party aggrieved does not come on record, with the leave of the Court and contest the suit. This decision in Dhurandhar Prasad Singh's case (supra) had also been taken note of and relied on by the apex Court in Bibi Zubaida Khatoon's case (supra). Therefore, it is essential to read the observations made by the apex Court in all the three decisions, viz., Sarvinder Singh's case (supra), Dhurandhar Prasad Singh's case (supra) and Bibi Zubaida Khatoon's case (supra), and a careful and conjoint reading of the aforesaid three decisions, more so, the excepts noticed hereinbefore, would only indicate categorically that there is absolutely no inconsistency on the broad principle that a transferee pendente lite can be permitted to be brought on record depending upon the facts and circumstances of the case.

16. The decision of the apex Court in Sarvinder Singh v. Dalip Singh (supra) was discussed in Bibi Zubaida Khatoon v. Nabi Hassan Saheb, (supra) and eventually it was held, as already noticed, that the facts of each case have to be taken into consideration and there was no specific bar to bring a transferee pendente lite on record. In Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay : [1992]2SCR1 the apex Court held that under Order 1 Rule 10 C.P.C., the Court has judicial discretion, which has to be exercised having regard to the

facts and circumstances of the case and direct the plaintiff, though dominns litus, to implead a person as a necessary party.

17. In *Savitri Devi v. District Judge, Gorakhpur and Ors.* : [1999]1SCR725 in similar circumstances where the third parties (purchasers pendente lite) tried to come on record, under Order 1 Rule 10 C.P.C., a three-Judge Bench of the apex Court held that the implead petitioners, if not brought on record, may file a separate suit in which even it may lead to multiplicity of litigation. Hence, the apex Court observed that they cannot be held to be not necessary parties to the suit.

18. In *Raj Kumar v. Sardarilal and Ors.* : (2004)2SCC601 the apex Court held thus:. The transferee pendente lite is treated in the eye of the law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22 Rule 10 C.P.C. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 C.P.C. confers a discretion on the Court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record the lis pendens transferee remains bound by the decree.

19. However, the entire case-law referred to above, if read carefully, it is hard to decipher any inconsistency anywhere in any part of those judgments.

20. Hence, we are of the considered view that the observations made by the apex Court in *Sarvinder Singh's* case (supra), which were followed by the learned Single Judge of this Court (T.Ch. Surya Rao, J) in *Kuna Ramulu's* case (supra), are unexceptionable on the general principle that Section 52 of the Transfer of Property Act is applicable in cases where there are transactions pending litigation and, on a broad spectrum, they are not in deviation to various other decisions of the apex Court, referred to supra, and the same, on broad principles, are to be read together with the observations made by the apex Court in the other decisions

stated supra.

21. In fact, the scope of Order 1 Rule 10 and Order 22 Rule 10 C.P.C. is similar. Therefore, the principles applicable to Order 22 Rule 10 C.P.C, in order to bring a purchaser pendente lite on record, are applicable to Order 1 Rule 10 C.P.C.

22. In *Petakamsetty Ramaswamy Naidu and Ors. v. Kandrupu Kondadu* : 2005(3)ALD853 one of us (D.S.R. Varma, J), referring to all the decisions of the apex Court mentioned hereinbefore -right from *Saila Bala 's case* (supra) - held that (1) a transferee pendente lite has no absolute right to come on record; (2) leave of the Court is essential in such cases, and (3) the discretionary jurisdiction of the Court would depend upon the facts and circumstances of each case. However, it was made clear that when an application for joinder based on transfer pendente lite is made, the transferee pendente lite, should, ordinarily, be joined as a party to enable him to protect his interest.

23. Therefore, there is absolutely no deviation in the legal position right from the decision rendered by the apex Court in *Saila Bala v. Nirmala Sundari* (supra) till the decision in *Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr.* (supra).

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

Firstly, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order 1 Rule 10 C.P.C. or under Order 22 Rule 10 C.P.C., as a general principle; Secondly, a transferee pendente lite is not entitled to come on record as a matter of right; Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party; (Emphasis added) Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record; Fifthly, where a transferee pendente lite does not ask for leave and come on record that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record; Sixthly, merely because such transferee pendente lite does not

come on record, the concept of his (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order 22 Rule 10 C.P.C., can seek leave of the Court to come record on his own or at the instance of either party to the suit.

25. Therefore, actually there appears no conflict between the views expressed by the apex Court in Khemchand Shanker Choudhary v. Vishnu Hari Patil (supra) and in Sarvinder Singh Dalip Singh (supra).

26. The reference is answered accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com