

Krishna Saini Vs. Chameli Devi and ors.

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Court : Delhi

Decided On : May-16-2011

Judge : Vikramajit Sen; Siddharth Mridul, Jj.

Appeal No. : FAO(OS) No.176/2011 & CM No.6542/2011

Appellant : Krishna Saini

Respondent : Chameli Devi and ors.

Advocate for Pet/Ap. : Mr. Nalin Tripathi, Adv.

Judgement :

1. Allowed, subject to all just exceptions. FAO(OS) No.176/2011 & CM No.6542/2011
2. This Appeal impugns the Order dated 14.2.2011 passed by the learned Single Judge wherein the Prayers of impleadment of the Appellant/Applicant in Suit No.2120/1998 was declined.
3. The Appellant is said to be a bonafide purchaser of a property, bearing No.E-111, Bhagwan Nagar, New Delhi for a consideration of ` 14,20,000/-, out of which a substantial sum of ` 9,00,000/- stands paid at the time of the execution of the subject Agreement to Sell, and the delivery of possession thereof to the Appellant. An impleadment is sought in CS(OS) No.2120/1998 which is a Suit for Partition in which a Preliminary Decree has been passed by Order dated 2.5.2007 by the

consent of all the parties to the said Partition Suit. The Appellant/Applicant seeks to set aside this consent Decree by getting herself impleaded in the said Suit on the ground that she is a bonafide purchaser not having knowledge of the said Partition Suit; that she has already parted with a considerable sum as consideration for the premises in question and she is in long and continuous possession of the same and that the Consent Decree is passed by collusion between the parties and behind her back.

4. It would be of pertinence to note that the Appellant/Applicant had filed a similar application for impleadment bearing number IA 1723/2008 in the same Suit. This Application was dismissed as withdrawn vide Order dated 2.2.2009 where the Court allowed the withdrawal of the said Application with the liberty to file a substantive Suit for vindicating its grievance. Consequently, a substantive Civil Suit, bearing number 220/2009 was filed before ADJ which thereafter got transferred and tagged along with CS(OS) No.2120/1999, viz. the Partition Suit. Thereafter, the Appellant/Applicant has once again filed an Application for impleadment in the Partition Suit which is the subject matter of the present Appeal.

5. Mr. Nalin Tripathi, learned counsel for the Appellant, has relied upon various precedents of the Supreme Court to argue that a subsequent purchaser, having a substantial interest in the subject matter of the Suit, is a necessary party and may be impleaded in the Suit. All the three precedents, viz. Amit Kumar Shaw vs- Farida Khatoon, (2005) 11 SCC 403, Dhanalakshmi vs- P. Mohan, (2007) 10 SCC 719 and Savitri Devi vs- District Judge, (1999) 2 SCC 577 have been considered by a Division Bench of this Court in S.N. Arora vs- Brokers and Brokers Pvt. Ltd., 2010(118) DRJ 631 of which one of us (Vikramajit Sen, J.) was a member concluding that a subsequent purchaser is not a necessary party in a suit between the two parties, the subsequent purchaser not being the party to the agreement between the litigating parties. The Division Bench arrived at this conclusion after taking into consideration various Supreme Court judgments (including those relied upon before us) and the doctrines of lis pendens and dominus litus. It was also concluded that the course open for a subsequent purchaser to safeguard his interest is to file a substantial independent suit. As we have noted earlier, this course of action has been availed of by the Appellant/Applicant by means of her

independent Suit No.220/2009 which has been ordered to be tagged with the present partition Suit in which impleadment is sought. Therefore, the Appellant's interests will be adequately administered in that Suit.

6. Further, the learned Single Judge, while dismissing the application of impleadment, has taken notice of the earlier application of impleadment which was filed and thereafter dismissed as withdrawn on 2.2.2009. The previous application was filed on the same ground and to achieve the same end as the present one. A party cannot be allowed to abuse the process of the Court by repeatedly filing similar applications one after another in the same legal proceedings. Having withdrawn the Application with a liberty on which the party has already acted upon, another application claiming the same relief cannot be entertained by this Court. The learned Single Judge was right in applying principles analogous to Order XXIII Rule 1 read with Section 141 to hold that once an application was withdrawn without liberty to file a fresh one, the subsequent application claiming the same relief is not maintainable.

7. The present Appeal is devoid of merit and accordingly stands dismissed. Since notice is not yet issued, we desist from imposing costs. CM No.6542/2011 also stands dismissed.

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