SUPREME COURT OF INDIA

Vidur Impex and Traders Pvt. Ltd.

Vs.

Tosh Apartments Pvt. Ltd.

C.A.No.5918 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.)

21.08.2012

JUDGMENT

G.S.Singhvi,J.

1. Leave granted.

2. Whether M/s. Vidur Impex and Traders Pvt. Ltd., and five other companies (hereinafter described as the appellants), who are said to have purchased the suit property, i.e. 21, Aurangzeb Road, New Delhi in violation of the order of injunction passed by the learned Single Judge of the Delhi High Court are entitled to be impleaded as parties to Suit No.425/1993 filed by respondent No.1 - M/s. Tosh Apartments Pvt. Ltd. is one of the two questions which arises for consideration in these appeals filed against judgment dated 20.2.2009 of the Division Bench of the Delhi High Court. The other question which needs consideration is whether the Delhi High Court was justified in appointing a receiver with a direction to take possession of the suit property despite the fact that the Calcutta High Court had already appointed a receiver at the instance of M/s. Bhagwati Developers Pvt. Ltd. (for short, 'Bhagwati Developers').

3. The suit property was leased by the Secretary of State for India to Sidh Nath Khanna and Sukh Nath Khanna sometime in 1930. After 12 years, the Governor General in Council sanctioned the grant of perpetual lease in favor of one of them, namely, Sidh Nath Khanna. In the family partition which took place in December 1955, the suit property fell to the share of Shri Devi Prasad Khanna, who was one of the heirs of Sidh Nath Khanna. He rented out the same to the Sudan Embassy on 12.9.1962. In October 1977, the name of respondent No.2-Pradeep Kumar Khanna (son of Devi Prasad Khanna), who died during the pendency of the litigation before the High Court and is represented by his legal representatives, was entered in the records of the Ministry of Works and Housing, Land and Development Office and the lease was transferred in his name.

4. In March 1980, respondent No.2 mortgaged the suit property to Shri S.N. Tondon. After 5 years, he entered into a collaboration agreement with Shri Arun Kumar Bhatia (respondent No.3) for construction of a multi-storied building. He also executed an agreement for sale in favor of respondent No.3. In November 1987, respondent No.2 took loan from Shri Avtar Singh and created an equitable mortgage in his favor. On 13.9.1988, respondent No.2 executed an agreement for sale in favor of respondent No.1 for a consideration of Rs.2.5 crores. After some time, respondent No.3 executed assignment deed dated 13.12.1988 in favor of respondent No.2. Simultaneously, the parties cancelled the collaboration agreement. After 3 months, respondent No.2 mortgaged the suit property in favor of respondent No.4. In 1992, respondent Nos. 2 and 4 entered into an agreement whereby the latter agreed to provide various services including the one that he will get the suit property vacated from the Sudan Embassy and for that he will charge Rs.4 crores.

5. The Sudan Embassy vacated the suit property on 12.5.1992 and handed over possession to respondent No.2, who is said to have handed over the same to respondent No.4. On coming to know about the proposed alienation of property by respondent No.2, respondent No.1 filed Suit No.425/1993 in the Delhi High Court for specific performance of agreement for sale dated 13.9.1988, award of damages and injunction. It also filed IA No.1947/1993 under Order 39 Rules 1 and 2 CPC. The learned Single Judge passed order dated 18.2.1993 and directed that defendant Nos. 1 and 3 (respondent Nos. 2 and 4 herein) shall not transfer, alienate or part with possession in any manner or create third party rights in respect of the suit property. After receiving summons, respondent Nos.2 and 4 filed IA No. 10730/1993 under Order 7 Rule 11 for rejection of the plaint on the ground that the same was barred by time. The learned Single Judge dismissed the application vide order dated 5.4.1994 and directed that interim order dated 18.2.1993 shall continue.

6. On 19.2.1997, respondent No.2 executed 6 agreements for sale in favour of the appellants for a total consideration of Rs.2.88 crores. In furtherance of those agreements, six sale deeds were executed and registered on 30.5.1997. In the meanwhile, the appellants executed agreement for sale dated 18.3.1997 in favour of Bhagwati Developers for a consideration of Rs.4.26 crores and received Rs.3.05 crores.

7. At that stage, respondent No.1 filed IA No. 8145/1998 for restraining respondent Nos.2 and 4 from handing over possession of the suit property to any other person. Respondent No.2 contested the application by asserting that he had not executed any sale deed in favour of the appellants and that possession of the suit property had already been handed over to respondent No.4. Thereupon, respondent No.1 filed CCP No. 118/1998 under Order 39 Rule 2A CPC with the allegation that the non-applicants including the appellants herein had entered into a conspiracy for the purpose of grabbing the property in violation of the order of

injunction passed by the High Court. The learned Single Judge entertained the contempt petition against respondent Nos. 2 and 4 but declined to do so qua the appellants by observing that no prima facie case had been made out against those who were not parties to the suit. Respondent No.1 also filed IA No.8146/1998 under Order 26 Rule 9 read with Order 39 Rule 7 and Section 151 CPC for appointment of Local Commissioner and IA No.8147/1998 under Order 40 Rule 1 read with Section 151 CPC for appointment of a receiver. The Court Commissioner appointed by the High Court to ascertain whether respondent Nos. 2 and 4 were in possession of the suit property, submitted report dated 10.2.2000 with the finding that respondent No.4 was in actual possession.

8. Respondent No.2 filed application dated 16.12.1998 for vacating interim order dated 18.2.1993. He pleaded that the agreement for sale executed in favor of respondent No.1 was, in fact, a loan agreement and the same was violative of Section 24 read with Section 23 of the Indian Contract Act, 1872. He further pleaded that the agreement was void and unenforceable because the requisite permission had not been obtained under Section 269 UC of the Income-Tax Act. Respondent No.2 also filed Suit No. 161/1999 for grant of a declaration that sale deeds executed in favor of the appellants were fictitious and were not binding on him. After about 2 years, Shri Bhupinder Singh, Advocate filed IA No. 255/2001 for withdrawal of the suit on the ground that the parties have amicably settled their dispute. Soon thereafter, the advocate who had instituted the suit, filed IA No.1537/2001 for restoration of the suit by asserting that IA No.255/2001 had been filed by an advocate who was not authorized to do so. The learned Single Judge directed that the application be listed only after filing of an affidavit by respondent No.2 that he had not authorized Shri Bhupinder Singh, Advocate to file I.A.No.255/2001. Respondent No.2 did not file the required affidavit till his death and as a result, I.A. No.1537/2001 is said to be still pending.

9. Another front of litigation was opened by Bhagwati Developers with the allegation that the appellants have failed to execute the sale deed in terms of agreement dated 18.3.1997. The dispute between Bhagwati Developers and the appellants was referred to the sole arbitration of Dr. Debasis Kundu, an Advocate of the Calcutta High Court. The Arbitrator passed award dated 7.1.1999 and directed the appellants to hand over vacant possession of the suit property along with the building to Bhagwati Developers on or before 31.1.1999 and also execute the sale deed after securing requisite permission and no objection certificate from the competent authorities. Simultaneously, Bhagwati Developers was directed to pay the balance amount of Rs.1,20,90,000/-.

10. As the appellants failed to act in consonance with the arbitral award, Bhagwati Developers filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 in the Calcutta High Court, which was allowed by the learned Single Judge of that High

Court vide order dated 17.8.2000 and a direction was issued to the appellants to comply with the arbitral award. The learned Single Judge also appointed Shri Nar Narayan Ganguli, Advocate as receiver and directed him to take possession of the suit property. When the receiver came to Delhi for execution of the award, respondent No.4 refused to hand over possession. Thereupon, the Calcutta High Court directed the police authorities at Delhi to assist the receiver for ensuring compliance of order dated 17.8.2000. Armed with that direction, the receiver visited Delhi on 19.1.2001 and 5.2.2001 and took symbolic possession of the suit property by putting locks and seals on all the inner and outer gates.

11. When the representative of respondent No.1 learnt about the award of the arbitrator and the order passed by the Calcutta High Court, he filed IA No.625/2001 in the Delhi High Court under Order 39 Rules 1 and 2 read with Section 151 CPC imp leading respondent Nos. 2 and 4, the appellants and Bhagwati Developers as parties and prayed that respondent Nos. 2 and 4 be restrained from handing over possession of the suit property and that the appellants be restrained from taking forcible possession in the garb of some order passed by the Calcutta High Court. The learned Single Judge of the Delhi High Court passed an ex-parte interim order dated 22.1.2001 and restrained respondent Nos. 2 and 4 from delivering possession of the suit property to the appellants and also restrained the latter from taking possession. Bhagwati Developers challenged that order in FAO (OS) No.90/2001, which was dismissed by the Division Bench of the High Court on 2.3.2001 with liberty to approach the learned Single Judge for appropriate order.

12. Respondent No.4 also filed IA No. 1211/2001 in the Delhi High Court for grant of injunction by alleging that an attempt is being made to dispossess him in the garb of an order passed by the Calcutta High Court. The learned Single Judge passed ex-parte interim order dated 8.2.2001 and restrained the appellants, Bhagwati Developers, the receiver appointed by the Calcutta High Court and Delhi Police from interfering with the possession of respondent No.4. Some of the observations made in that order, which have bearing on the disposal of these appeals, are extracted below:

> "Quite clearly Respondents No.4 to 9 in this application were aware of the fact that Defendant No.1 had filed Suit No.161/99. A mention was made in the plaint in Suit No. 161/99 that the present suit, that is, Suit No.425/93 was pending in this Court. So, Respondents No.4 to in this application were also aware of the pendency of this suit. It appears that Respondents No.4 to 9 in this application did not bother to find out the correct factual position with regard to the possession of the suit property or with regard to the interim orders passed by this Court. Well before all this, and apparently expecting Defendant No. 1 to perform the Agreement to sell, these 6 persons who are Respondents No.4 to 9 in this application entered into an agreement to sell the suit

property to Respondent No.10 in this application.

There appear to have been some disputes between Respondents No.4 to 9 in this application and Respondent No.10 in the application in respect of the suit property. Since there was an arbitration clause in the agreement between them, they referred the matter to arbitration. The learned Arbitrator gave an Award dated 7th January, 1999 wherein he directed Respondents No. 4 to 9 in this application to hand over peaceful vacant possession of the suit property to Respondent No.10 in this application. No objections appear to have been filed to this Award with the result that Respondent No.10 in this application filed proceedings in the Calcutta High Court praying for a direction for the appointment of a Receiver to take physical possession of the suit property. The Calcutta High Court passed an order apparently directing the Receiver to take possession of the suit property. On 13th December, 2000 the Calcutta High Court directed the police authorities to render all assistance to the Receiver to take steps in accordance with the earlier order passed by the Calcutta High Court. When the Receiver and the police authorities came to take possession of the suit property, L.K. Kaul became aware of the proceedings in the Calcutta High Court. It is submitted that there has been gross concealment and misrepresentation of facts by Defendant No.1 in the suit to Respondents No.4 to 9 in this application. There has also been gross misrepresentation and concealment of fact by Respondents No.4 to 9 in this application to Respondent No.10 in this application. It is also submitted that there is also a gross concealment and, therefore, a misrepresentation of facts by Respondents No.4 to 10 in this application insofar as the learned Arbitrator is concerned. Consequently, there has also been a gross concealment and, therefore, a misrepresentation of the facts so far as Calcutta High Court is concerned. It is submitted that had all these facts been brought to the notice of the concerned parties as well as to the learned Arbitrator and the Calcutta High Court, there would have been no question of any appointment of a Receiver in violation of the orders passed by this Court on 18th February, 1993 read with order dated 31st January, 2000. I am prima facie satisfied that Defendant No.1 and Respondents No.4 to 10 in this application are playing a cat and mouse game with this Court. There has been a serious concealment and misrepresentation of facts by Defendant No.1 in this suit. There has also been a serious concealment and misrepresentation of facts by Respondents No.4 to 9 in this application insofar as Respondent No.10 in this application is concerned. Respondents No.4 to 10 are at fault in not finding out what the correct facts are and making necessary enquiries in this regard. They appear to have deliberately misled the learned Arbitrator and the Calcutta High Court." (emphasis supplied)

13. Respondent No.4 filed another application (IA No. 9576/2001) for restraining the appellants from executing the sale deed in favour of Bhagwati Developers. The learned Single Judge entertained the application and passed interim order in terms of the prayer

made. The same respondent filed an application in EC No.10/2000 pending before the Calcutta High Court and brought to the notice of that High Court, order dated 8.2.2001 passed by the Delhi High Court in Suit No. 425/1993. After taking cognizance of the rival submissions, the learned Judge of the Calcutta High Court passed order dated 15.2.2001 and made it clear that the order passed by that Court will be subject to the order which may be passed by the Delhi High Court. The relevant portions of that order are reproduced below:

> "The facts remain that these facts were neither disclosed to the decree-holder nor to the Arbitrator and this question was not necessary to be gone into while executing the decree and, as such, it was also not placed before this Court and this Court having not been apprised of such facts had passed an order for taking over possession of the property. In the order dated 8.2.2001 the Delhi High Court had taken a note of this position. Be that as it may, it is not necessary to make any observation with regard to the findings made therein, nor this Court can comment on the order passed by another Court on the basis of the materials placed before it. But it appears that there is every possibility of conflicting orders being passed in respect of the self-same properties between the parties or those claiming through one or the other of them by two High Courts. Judicial propriety demands that the court should maintain its decorum and dignity and should not pass any order which will lie in conflict with each other. It is the parties who may fight each other but not the Courts. If some order is passed, it is expected that another Court should pay proper regards and respect to such order. Since it is pointed out that these facts were not disclosed before this Court, therefore what would have been the effect if these facts would have been disclosed before this Court is a question which cannot now be presumed, but in all probabilities it sees that if these facts were disclosed before this Court, this Court might have been slow in passing the order that had been passed earlier. Therefore, the order passed by this Court, if it is in conflict with the order passed by the Delhi High Court, the same shall always be subject to the order that might be passed by the Delhi High Court. Since Delhi High Court has also passed an order by which certain direction was given to the Receiver appointed by this Court, therefore, it is no more necessary to pass any further order. In my view, the decree-holder in this proceeding who is added as Defendant No.10 in the Delhi High Court suit should approach the Delhi High Court for obtaining the appropriate orders if he is so advised. If there is a conflict of decree which might affect a proceeding in another High Court, in that event the same has to be thrashed out in an appropriate proceeding. It is very difficult to enter into such question in an execution proceeding unless such question be raised in a proceeding under Order XXI Rule 97 C.P.C. From the records of this Court, it does not appear that any such application under Order XXI Rule 97 has ever been made in order to

enable the parties to resisting possession in execution of the decree, so that they would have an opportunity to place their cases about the executability of the decree against them." (Emphasis supplied)

14. Thereafter, Bhagwati Developers filed IA No. 2268/2003 in Suit No.425/1993 pending before the Delhi High Court with the prayer that the receiver appointed by the Calcutta High Court be continued. Respondent No.1, who had already filed IA No.8147/1998 for appointment of receiver, contested the application of Bhagwati Developers by asserting that it had no locus standi in the matter because the agreement by which it purchased the property from the appellants was fraudulent in nature. Respondent No.1 also reiterated its prayer for appointment of a receiver by the Delhi High Court by contending that respondent No.4 was a ranked trespasser and there was every possibility of his entering into clandestine deals and alienating the property. On his part, respondent No.4 pleaded that his possession was lawful because respondent No.2 had put him in possession in furtherance of the agreement executed in 1992.

15. At this stage, we may mention that respondent No.4 also filed IA No.7373/2006 in Suit No.425/1993 for grant of leave to amend the written statement by incorporating the fact that respondent No.2 had agreed to pay Rs.4 crores as service charges for getting the property vacated from the Sudan Embassy with a stipulation that in the event of non-payment of the amount, vacant and peaceful possession of the suit property will be handed over to him; that even though he got the property vacated from the Sudan Embassy, respondent No.2 did not pay the amount and handed over possession of the property as security for the same. Respondent No.4 claimed that these facts could not be incorporated in the original written statement because his earlier lawyer thought that the same were not necessary for deciding the suit filed by respondent No.1 for specific performance and permanent injunction. Respondent No.4 also sought incorporation of the fact that the property had been mortgaged to him and he was in possession as a mortgagee. Respondent No.1 opposed the prayer for amendment by asserting that respondent No.4 was seeking to make out a new case which was contrary to the defense set up in the original written statement.

16. By an order dated 3.9.2007, the learned Single Judge of the Delhi High Court dismissed IA No. 2268/2003 and IA No. 7373/2006 and allowed IA No.8147/1998. He first considered the applications filed by respondent No.1 and Bhagwati Developers in the matter of appointment of receiver and held:

"Undoubtedly the initial agreement to sell is between the plaintiff and defendant No.l (since deceased) now being represented by his legal heirs. However, yet another agreement to sell come into existence on 18th March, 1977 between Bhagwati

Developers Private Limited and respondents 4 to 9 by which 6 companies agreed to sell the said property in favor of Bhagwati Developers with arbitration clause contained in the agreement and that dispute shall be subject to the jurisdiction of Calcutta High Court. The Court fails to understand as to how the dispute relating to immovable property which is situated in Delhi could be taken to Calcutta for adjudication by completing bye passing the provisions of Section 16 of the Code of Civil Procedure. It is also evident on record that defendant No. 3 who is currently in possession does not enjoy the status either of licensee or of lessee nor he is there any other capacity with the consent of either of the parties. He is simply holding over the possession once open a time he was given the task of getting of Sudan Embassy vacated. This Court really wonder about the sanctity of such kind of agreements as executed between the plaintiff and defendant No.3 and between defendant No.l and defendant No. 3 for the purpose of getting the Sudan Embassy vacated. Rent Control laws seem to have been thrown to the winds. Task is taken by individual to get the premises vacated from Sudan Embassy and that too for consideration. I am afraid if such an agreement has a legal sanctity. That being so the possession of defendant No.3 cannot be termed as legal in the suit property. If at all his services charges were not paid he has the legal remedy either with the plaintiff or defendant No.l. Under no law he can be permitted to retain the possession of the property. Therefore in any case he has to go out of the property he being stranger to the suit property having no title or interest of any nature. Learned counsel for the plaintiff has also been able to establish by way of various authorities referred to above that it is a fit case where Receiver should be appointed for the management of the property who can manage the affairs of the suit property under the supervision of the Court as there is every likelihood that in the eventuality of not appointing the Receiver there is strong likelihood of the property being usurped in a clandestine manner so as to frustrate the claims of the rightful claimant. Even otherwise not appointing the Receiver at this juncture might lead to multifarious litigation. Therefore in order to prevent all these wrongs and further damage and waste to the property, appointment of Receiver has become essential so as to preserve the property. Therefore, Sh. Rajesh Gupta, Advocate is hereby appointed as Receiver. His fee is fixed at Rs.50,000/- initially subject to revision, depending on the quantum of work he might have to undertake while acting as Receiver to be paid by the plaintiff. He will manage the affairs of the suit property by removing defendant No.3 from the suit property. If need arise, he may take the assistance of the police to thwart any resistance and also may break open the locks of the property and make an inventory of the goods lying therein. If he required to do any work in respect of the property like maintenance, he shall seek prior permission

from the Court. This application is accordingly allowed.

17. This order shall also take care of the application of Bhagwati Developers Pvt. Ltd. proposed defendant No. 10 wherein while treating the possession of defendant No.3 as unlawful possession in the suit property has sought directions from this court that the Receiver appointed by the High Court of Calcutta be continued and the possession of the property be handed over to him who should retain the property in his possession as in the capacity of Receiver. I may state that when the matter was taken to Calcutta High Court between six alleged transferees and Bhagwati Developers Pvt. Ltd., the Calcutta High Court in its order dated 13th February, 2001 clearly indicated that the decree passed by the Calcutta High Court if comes in conflict with the order passed by Delhi High Court, the same shall always be subject to the order that might be passed by the Delhi High Court. In view of the fact that this court while allowing the application of the plaintiff has appointed Receiver for managing the control and supervision of the property in question. Therefore, the order passed by the Calcutta High Court appointing Receiver has to be kept in abeyance as Calcutta High Court itself stated that decision of Delhi High Court shall have precedence over their decision. This being so, plea of the proposed defendant No. 10 that Receiver so appointed by Calcutta High Court should continue, cannot be accepted. The learned Single Judge then considered the application filed by respondent No.4 for amendment of the written statement and dismissed the same by recording the following observations:

> "True, law of amendment is quite liberal and Courts ordinarily permits amendment provided such amendments are not mischievous in nature with a view to delay the legal proceedings and setting up entirely new case than the one pleaded earlier but in this case, I may say that written statement was filed way back in 1993 and good number of years have passed, but it never struck the defendant to make such amendment simply by putting the blame on earlier lawyer. Even otherwise amendment which is sought to be made was well within the knowledge of defendant No. 3. During all these years when proceedings were continuing that he was being termed as trespasser. What prevented him to explain his true position at the earliest is not explained at all. To me it seems that when arguments were being heard and the counsel for the parties put up their respective claims then it has struck the mind of defendant No. 3 to apply for such amendment as it might work to his advantages. If at all he was in possession because of defendant No.l's consent he should have pleaded so at the earliest. Such belated amendment which is otherwise totally inconsistent to the stand taken earlier in the written statement cannot be allowed as in that case it would amount to take the case back to the year 1993 when the suit was filed. Therefore this application has no merit, it being full of malice, the same is dismissed."

18. After about 11 years of the execution of agreements for sale in their favor by respondent No.2, the appellants filed IA No.1861/2008 under Order 1 Rule 10(2) CPC for impalement as defendants in Suit No. 425/1993. They pleaded that by virtue of the agreements for sale and the sale deeds executed by respondent No.2, they have become absolute owners of the suit property and, as such, they are entitled to be impleaded as defendants in the suit filed by respondent No.1. The appellants also invoked the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882 and pleaded that having purchased the property during the pendency of the suit by respondent No.1, they have acquired the right to contest the same. The appellants relied upon the orders passed by the Delhi High Court in IA Nos. 625/2001, 1211/2001 and 9576/2001 to show that respondent No.1 was very much aware of the agreements for sale and the sale deeds executed in their favour by respondent No.2 and the agreement executed by them in favor of Bhagwati Developers and pleaded that it was the duty of respondent No.1 to have suo motu impleaded them as parties to the suit. In the reply filed on behalf of respondent No.1, it was pleaded that the suit for specific performance had been filed because respondent No.2 did not execute the sale deed in furtherance of agreement for sale dated 13.9.1988 and the appellants who are not parties to that agreement do not have the locus to contest the suit. Respondent No.1 also raised an objection of delay by asserting that the appellants had sought impalement after 11 years of having entered into a clandestine transaction with respondent No.2. Respondent No. 1 relied upon orders dated 22.1.2001, 24.1.2001 and 8.2.2001 passed by the Delhi High Court and Suit No. 161/1999 field by respondent No.2 for grant of a declaration that the sale deeds allegedly executed in favor of the appellants were forged and fabricated, to show that the appellants were very much aware of Suit No.425/1993 and pleaded that their assertion about lack of knowledge was false because they had been contesting Suit No.161/1999 for almost 7 years. Another plea taken by respondent No.1 was that the transactions entered into between respondent No.2, the appellants and Bhagwati Developers were ex facie illegal and on the basis of such transactions the appellants did not acquire any right or interest in the suit property.

19. The learned Single Judge dismissed IA No. 1861/2008 vide order dated 26.5.2008, relevant extracts of which are reproduced below:

> "The cumulative sequence of events noticed above leads this Court to conclude that the vendor P.K. Khanna allegedly sold the properties in 1997. The applicants also claim as such. They were aware about the existence of this suit if not in 1999 at least from 2001 onwards, when they were made parties in an application and subject to an injunction. Their conduct in approaching, for impalement, now seven years later, cannot be countenanced. That apart, as held in Kasturi's case their impalement would completely alter the nature of the suit which was instituted in 1993 for specific

performance of a contract, of 1988. There is no whisper of leave having been obtained by their vendor, to this transaction. The record shows that the vendor was admittedly restrained by an injunction from parting with possession or creating third party rights in respect of the suit property, on 18th February, 1993. That order was subsequently confirmed after hearing the vendor/P.K. Khanna i.e. first defendant on 5th April, 1994. In view of the principles spelt out in Bibi Zubaida Khatoon and Surjit Singh accepting this application would defeat the ends of justice and undermine public policy."

20. Bhagwati Developers challenged order dated 3.9.2007 in FAO (OS) No. 514 of 2007. Respondent No.4 also challenged that order in FAO (OS) No. 400 of 2007. The appellants questioned order dated 26.5.2008 in FAO (OS) No. 324 of 2008. The Division Bench of the High Court dismissed all the appeals and approved the orders passed by the learned Single Judge. The Division Bench referred to order dated 15.2.2001 passed by the *Calcutta High Court and the judgments in Surjit Singh v. Harbans Singh*[1]*Jayaram Mudaliar v. Ayyaswamia Ors*[2]*Rajender Singh Ors. v. Santa Singh Ors*[3]*Joginder Singh Bedi v. Sardar Singh Ors*[4]*Del (DB) and Sanjay Gupta v. Kalawati Ors*[5]and held that the learned Single Judge was justified in appointing a receiver for protecting the suit property because respondent No.2 had flouted the injunction order with impunity and if the receiver was not appointed there was every possibility of further alienation of the suit property. Paragraph 26 of the impugned judgment in which the Division Bench of the High Court enumerated the factors necessitating appointment of receiver by the learned Single Judge and paragraph 33 are extracted below:

"26. Following developments and circumstances in this behalf need mention and/or reiteration:

a) The suit filed by the plaintiff is predicated on agreement to sell dated 13.9.1988 purportedly executed in its favour by the defendant No.l, owner of the suit property, which is earliest transaction in point of time.

b) Suit, on this basis, filed in April 1993 is also earliest legal proceeding instituted by the plaintiff. In this suit, ad interim injunction dated 18.2.1993 was passed restraining defendant Nos.1 3 from transferring, alienating or parting with possession of the suit property in any manner or creating third party rights therein.

c) The plaintiff also filed another IA No.9154/1993 seeking restraint against the defendant No.l as well as defendant No.3 from changing the nature of the suit property by making structural changes, additions or alterations therein. In this application orders were passed directing them not to carry out any structural additions,

alterations and permitted only the renovations like painting, polishing of the suit property.

d) In spite of the restraint order dated 18.2.1993, the defendant No.l allegedly transferred the suit property by executing purported six sale deeds on 28.5.1997 in favour of Vidur Impex Traders and others. It is the submission of learned counsel appearing for the plaintiff that intentionally six sale deeds were executed showing consideration of Rs.48 lacs each keeping the same below the prescribed limit of Rs.50 lacs with a fraudulent intent to avoid the application of Chapter XX-C of the Income-Tax Act.

(e) On coming to know of the aforesaid sale transactions, the plaintiff filed application under Order XXXIX Rule 1 2 CPC for restraining the defendant Nos.1 2 from transferring possession of the suit property to the said six transferees under the alleged six sale deeds. Restraint order to this effect was passed by the learned Single Judge. Further orders were passed restraining these six transferees (defendant No.s 4 to 9) from acting upon the impugned sale deeds.

(f) Defendant No.l in his reply took the stand that impugned sale deeds were forged and fabricated and were not executed by him. He even filed suit No. 161/1999 for declaration to this effect. However, this suit was withdrawn on 10.1.2001 vide application IA No. 255/2001 purported to have been moved by him through Shri Bhupinder Singh, Advocate, on the statement of Advocate without the presence of the defendant No.l or his statement. Thereafter, IA No.1537/2001 was moved by the defendant No.l stating that he had not authorized any counsel to make an application for withdrawal of the suit and the whole proceedings were collusive, fraudulent and that he had not entered into any compromise with the said six transferees. Though we are not concerned with these proceedings, this fact is mentioned to highlight the manner in which the transactions are taking place, that too in the teeth of injunction order passed in Suit No.425/1993 and the vacillating attitude of the defendant No.l (since deceased).

(g) Though there was restraint order against defendant Nos. 4 to 9, i.e. Vidur Impex Traders and others, not to act upon the impugned sale deeds, they entered into agreement dated 18.3.1997 for transfer of their purported rights and interest in the suit property in favour of Bhagwati Developers. This agreement contained an arbitration clause, on the basis of which the Arbitrator was appointed and consent award passed. Again, without commenting upon the validity or otherwise of such proceedings, which would naturally be thrashed out in appropriate proceedings, suffice it to state

was that all this was happening in violation of the injunction order passed in the instant suit. Attempt was made to get the Receiver appointed from the Calcutta High Court and take possession of the suit property. In this behalf, we agree with the submission of Mr. Singhvi, learned senior counsel for the plaintiff, that in a suit for specific performance, the court has ample power and jurisdiction to appoint a receiver, in Kerr on Receivers 16th Edition (on page 58), it has been laid down that if a fair prima facie case for the specific performance of a contract is made to appear, the court may interfere upon motion and appoint receiver. In Foot Note No. 37, reference has been made to case law including *C. Kennedy v. Lee*[6]*M.cloudy.Phelp*[7]*.The appointment may be made in such circumstances before the order for a sale is made absolute. (Re: Stephard*[8]*"*

21. The Division Bench approved the rejection of the appellants' prayer for impalement as parties in Suit No. 425/1993 by observing that after executing the agreement for sale in favor of Bhagwati Developers they do not have any subsisting interest in the property. The Division Bench also agreed with the learned Single Judge that the application filed by the appellants lacked bona fides because they purchased the suit property from respondent No.2 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 about 8 years.

22. Learned senior counsel for the appellants emphasized that his clients were not aware of the agreement for sale executed by respondent No.2 in favour of respondent No.1, the suit for specific performance and permanent injunction filed by respondent No.1 in the Delhi High Court and injunction order dated 18.2.1993 till January, 2001 when the learned Single Judge restrained respondent Nos.2 and 4 from transferring possession of the suit property to the appellants, and argued that the High Court committed serious error by declining their prayer for impleadment as parties to the suit. He submitted that the appellants are bona fide purchasers for consideration and are entitled to contest the suit filed by respondent No.1, else their right in the suit property will get jeopardized. Learned senior counsel then argued that the agreement for sale executed by the appellants in favour of Bhagwati Developers did not result in alienation of the suit property and the High Court committed an error in holding that the appellants had no subsisting right in the subject matter of the suit. He relied upon the judgments of this Court in *Nagubai Ammal v. B Shama Rao*[9]*Khemchand S. Choudhari v. Vishnu Hari*[10]*Savitri Devi v. DJ, Gorakhpur*[11]*Kasturi v. Iyyamperumal*[12]*Amit Kumar Shaw v. Farida Khatoon*[13]*Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.*[14]*and Vinod Seth v. Devinder Bajaj*[15]and argued that respondent No.1 should be directed to implead the appellants as parties to the suit because their rights will be adversely affected if a decree is passed in favour of respondent No.1. Learned senior counsel

submitted that impleadment of the appellants will enable the Court to comprehensively decide all the issues and will also obviate the necessity of further litigation in the matter.

23. Learned senior counsel appearing for Bhagawati Developers invoked the doctrine of comity of jurisdiction of the Courts and argued that in view of the order passed by the Calcutta High Court for appointment of receiver who had already taken possession of the suit property, the Delhi High Court should have refrained from exercising its power to appoint receiver with a direction to him to take over the property.

24. Learned senior counsel for respondent No. 1 relied on Surjit Singh v. Harbans Singh (supra) and argued that the appellants are neither necessary nor proper parties because the agreements for sale and the sale deeds executed by respondent No.2 in their favour had no legal sanctity. Learned senior counsel submitted that the alienation of suit property by respondent No.2 in violation of the injunction granted by the Delhi High Court was nullity and such a transaction did not create any right in favour of the appellants or Bhagwati Developers so as to entitle them to contest the litigation pending between respondent Nos.1 and 2. Learned senior counsel submitted that in a suit for specific performance, any transfer which takes place in violation of an injunction granted by the Court would be hit by the doctrine of lis pendens enshrined in Section 52 of the Transfer of Property Act, 1882. Learned senior counsel further submitted that on the date of filing IA No.1861/2008 the appellants did not have any subsisting interest in the suit property because they had already executed an agreement for sale in favour of Bhagwati Developers and received substantial part of the consideration and the mere fact that they were made parties in the interlocutory applications filed before the Delhi High Court cannot entitle them to seek impleadment as defendants in the pending suit. Learned senior counsel then argued that the agreement to sell executed between the appellants and Bhagwati Developers and the proceedings instituted before the Calcutta High Court were collusive and fraudulent and the appellants and Bhagwati Developers cannot take benefit of the order passed by that Court. He emphasized that even though the appellants and Bhagwati Developers had knowledge of the suit pending before the Delhi High Court, they deliberately suppressed this fact from the Calcutta High Court and succeeded in persuading the Court to appoint an arbitrator and a receiver. Learned senior counsel submitted that the doctrine of comity of jurisdictions cannot be invoked by Bhagwati Developers because the Delhi High Court was already seized of the matter and the application filed by respondent No.1 for appointment of receiver was pending since 1998. Learned senior counsel lastly argued that the Delhi High Court did not commit any error by appointing a receiver because respondent Nos.2, 4, the appellants and Bhagwati Developers tried to grab the suit property by entering into clandestine transactions.

25. We have considered the respective arguments/submissions. The first question that requires determination is whether the appellants are entitled to be impleaded as parties in Suit No. 425/1993 on the ground that during the pendency of the suit they had purchased the property from respondent No.2. Order 1 Rule 10(2) CPC which empowers the Court to delete or add parties to the suit reads as under:

> "10 (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."

26. In *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay*[16]this Court interpreted the aforesaid provision and held:

> "Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case." (emphasis supplied)

27. In *Anil Kumar Singh v. Shivnath Mishra*[17]this Court interpreted Order 1 Rule 10(2) in the following manner:

> "By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party- defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to

the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

28. In Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd. (supra), this Court considered the scope of Order 1 Rule 10(2) CPC and observed:

> "The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below: "10. (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. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a

necessary party or a proper party to the suit for specific performance. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice." (emphasis supplied)

29. In *Kasturi v. Iyyamperumal (supra),* this Court considered the question whether a person who sets up independent title and claims possession of the suit property is entitled to be impleaded as party to a suit for specific performance of contract entered into between the plaintiff and the defendant. In that case, the trial Court allowed the application for impleadment on the ground that respondent Nos.1 and 4 to 11 were claiming title and possession of the contracted property and, therefore, they will be deemed to have direct interest in the subject matter of the suit. The High Court dismissed the revision filed by the appellant and confirmed the order of the trial Court. While allowing the appeal and setting aside the orders of the trial Court and the High Court, this Court referred to Order 1 Rule 10(2) CPC and observed:

"In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. 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. As noted hereinearlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale.

For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker v. Small made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it. The aforesaid decision in Tasker was noted with approval in De Hoghton v. Mone. Turner, L.J. observed:

Here again his case is met by Tasker in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed." (emphasis supplied)

30. In Amit Kumar Shaw v. Farida Khatoon (supra), this Court examined the correctness of the order passed by the Calcutta High Court which had approved the dismissal of the application filed by the appellants for impleadment as parties to the suit filed by the original owner Khetra Mohan Das and the transferees, namely, Birendra Nath Dey and Smt. Kalyani Dey. One Fakir Mohammad claimed right, title and interest in the suit property by adverse

possession. The suit was decreed by the trial Court. On appeal, the same was remanded for fresh adjudication of the claim of the parties. Fakir Mohammad challenged the order of remand by filing two second appeals. During the pendency of the appeals, Birendra Nath Dey assigned leasehold interest in respect of a portion of the suit property to the appellants. Smt. Kalyani Dey sold the other portion of the suit property to the appellants. When the appellants applied for recording their names in the municipal records, they came to know about the pendency of the appeals. Immediately thereafter, they filed an application for impleadment which was rejected by the High Court. This Court referred to the provision of Order 1 Rule 10(2) and Order 22 Rule 10 CPC as also Section 52 of the Transfer of Property Act, 1882 and observed: "Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

> "1. There must be a suit or proceeding pending in a court of competent jurisdiction.
>
> 2. The suit or proceeding must not be collusive.
>
> 3. The litigation must be one in which right to immovable property is directly and specifically in question.
>
> 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
>
> 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order. 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." (emphasis supplied)

31. In Savitri Devi v. DJ, Gorakhpur (supra), this Court upheld the order passed by the trial Court for impleadment of respondent Nos.3 to 5, who had purchased the suit property without knowledge of the pending litigation, as parties. On behalf of the appellant, it was argued that respondent Nos. 3 to 5 cannot be treated as necessary parties because alienation made in their favour was in violation of the injunction order passed by the Court. In support of this argument, reliance was placed on the judgment in Surjit Singh v. Harbans Singh (supra). This Court distinguished that judgment by observing that in that case the assignors and the assignees had knowledge of the injunction order passed by the Court and held that the order passed by the trial Court which was affirmed by the District Judge and the High Court does not call for interference.

32. In Vinod Seth v. Devinder Bajaj (supra), this Court interpreted Section 52 of the Transfer of Property Act, 1882 and observed:

> "It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit. The principle underlying Section 52 of the TP Act is based on justice and equity. The operation of the bar under Section 52 is however subject to the power of the court to exempt the suit property from the operation of Section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the pendency of the suit."

33. In Surjit Singh v. Harbans Singh (supra), this Court considered the question whether a person to whom the suit property is alienated after passing of the preliminary decree by the trial Court, which had restrained the parties from alienating or otherwise transferring the suit

property, has the right to be impleaded as party. The trial Court accepted the application filed by the transferees and the order of the trial Court was confirmed by the lower appellate Court and the High Court. While allowing the appeal against the order of the High Court, this Court observed:

> "In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders."

34. In *Sarvinder Singh v. Dalip Singh*[18]this Court considered the question whether the respondent who purchased the property during the pendency of a suit for declaration filed by the appellant on the basis of the registered Will executed by his mother is entitled to be impleaded as party and observed:

> "The respondents indisputably cannot challenge the legality or the validity of the Will executed and registered by Hira Devi on 26-5- 1952. Though it may be open to the legal heirs of Rajender Kaur, who was a party to the earlier suit, to resist the claim on any legally available or tenable grounds, those grounds are not available to the respondents. Under those circumstances, the respondents cannot, by any stretch of imagination, be said to be either necessary or proper parties to the suit. A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt Hira Devi. Moreover, admittedly the respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on 2-12-1991 and 12- 12-1991, pending suit. Section 52 of the Transfer of Property Act envisages that:

> "During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable 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 the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose. It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit." (emphasis supplied)

35. In *Bibi Zubaida Khatoon v. Nabi Hassan*[18]this Court was called upon to consider the correctness of the High Court's order, which declined to interfere with the order passed by the trial Court dismissing the applications filed by the appellant for impleadment as party to the cross suits of which one was filed for redemption of mortgage and the other was filed for specific performance of the agreement for sale. While dismissing the appeal, this Court referred to the judgments in *Sarvinder Singh v. Dalip Singh (supra) and Dhurandhar Prasad Singh v. Jai Prakash University*[20]and observed that there is no absolute rule that the transferee pendente lite shall be allowed to join as party in all cases without leave of the Court and contest the pending suit.

36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

> "1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impalement of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.
>
> 2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favor of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impalement against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impalement of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impalement."

37. In the light of the above, we shall now consider whether the learned Single Judge and the Division Bench of the High Court committed an error by dismissing the appellants' application for impalement as parties to Suit No.425/1993. At the cost of repetition, we consider it necessary to mention that respondent No.1 had filed suit for specific performance of agreement dated 13.9.1988 executed by respondent No.1. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when respondent No.2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained respondent No.2 from alienating the suit property or creating third party interest. To put it differently, the agreements for sale and the sale deeds executed by respondent No.2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether respondent Nos.1 and 2 had entered into a binding agreement and whether respondent No.1 is entitled to a decree of specific performance of the said agreement. That apart, after executing agreement for sale dated 18.3.1997 in favour of Bhagwati Developers, the appellants cannot claim to have any subsisting legal or commercial interest in the suit property and they cannot take benefit of the order passed by the Calcutta High Court for appointment of an arbitrator which was followed by an order for appointment of receiver because the parties to the proceedings instituted before that Court deliberately suppressed the

facts relating to Suit No.425/1993 pending before the Delhi High Court and the orders of injunction passed in that suit.

38. We are in complete agreement with the Delhi High Court that the application for impalement filed by the appellants was highly belated. Although, the appellants have pleaded that at the time of execution of the agreements for sale by respondent No.2 in their favour in February 1997, they did not know about the suit filed by respondent No.1, it is difficult, if not impossible, to accept their statement because the smallness of time gap between the agreements for sale and the sale deeds executed by respondent No.2 in favour of the appellants and the execution of agreement for sale by the appellants in favour of Bhagwati Developers would make any person of ordinary prudence to believe that respondent No.2, the appellants and Bhagwati Developers had entered into these transactions with the sole object of frustrating agreement for sale dated 13.9.1988 executed in favor of respondent No. 1 and the suit pending before the Delhi High Court. In any case, the appellants will be deemed to have become aware of the same on receipt of summons in Suit No.161/1999 filed by respondent No.2 for annulment of the agreements for sale and the sale deeds in which respondent No.2 had clearly made a mention of Suit No.425/1993 filed by respondent No.1 for specific performance of agreement for sale dated 13.12.1988 and injunction or at least when the learned Single Judge of the Delhi High Court entertained IA No.625/2001 filed by respondent No.1 and restrained respondent Nos.2 and 4 from transferring possession of the suit property to the appellants. However, in the application for impalement filed by them, the appellants did not offer any tangible explanation as to why the application for impalement was filed only on 4.2.2008 i.e. after 7 years of the passing of injunction order dated 22.1.2001 and, in our considered view, this constituted a valid ground for declining their prayer for impalement as parties to Suit No.425/1993.

39. The ratio of the judgment in Kasturi v. Iyyamperumal (supra), on which heavy reliance has been placed by the learned senior counsel for the appellants, does not help his clients. In the present case, the agreements for sale and the sale deeds were executed by respondent No.2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in Surjit Singh v. Harbans Singh(supra) would squarely apply to the appellants' case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the category of bona fide purchaser. Therefore, their presence is neither required to

decide the controversy involved in the suit filed by respondent No. 1 nor required to pass an effective decree.

40. The next question which merits consideration is whether the Delhi High Court was justified in appointing the receiver and directing him to take possession of the property. Though, learned senior counsel appearing for Bhagwati Developers has sought to invoke the doctrine of comity of jurisdictions of the Courts for continuance of the receiver appointed by the Calcutta High Court, we do not find any merit in his submission. It is not in dispute that respondent No. 1 had filed the suit for specific performance on 1.2.1993 and the learned Single Judge of the Delhi High Court passed the order of injunction on 18.2.1993. The arbitral award for specific performance of the agreement for sale of the same property entered into between the appellants and Bhagawati Developers was obtained on 7.1.1999. The execution proceedings were instituted in the Calcutta High Court in 2000 and the order for appointment of receiver was passed on 12.8.2000. It is thus clear that when Bhagwati Developers approached the Calcutta High Court, the Delhi High Court was already seized with the suit involving the subject matter of the award. The contention of the appellants and Bhagawati Developers that they were unaware of the proceedings before the Delhi High Court cannot be accepted because in Suit No.161/1999 filed by respondent No.2 for declaring that the agreements for sale and the sale deeds relied upon by the appellants were false and fabricated, a specific reference was made to the suit filed by respondent No.1. That apart, in its order dated 15.2.2001 passed in the application filed by respondent No.4 in EC No.10/2000, the learned Single Judge of the Calcutta High Court categorically observed that the said Court had not been apprised of the facts relating to the suit pending before the Delhi High Court and the injunction orders passed therein including order dated 8.2.2001 restraining the receiver of the Calcutta High Court from taking possession of the property and that if these facts had been disclosed, the Court would have been slow in passing the order that it had passed earlier and hence the order passed by it, if it is in conflict with the order passed by the Delhi High Court, would be subject to that order and Bhagawati Developers who is a party to the proceedings before the Delhi High Court can approach the said Court for obtaining appropriate orders. This shows that on being apprised of the correct facts, the learned Single Judge of the Calcutta High Court had shown due respect to the orders passed by the Delhi High Court and directed that the same should operate till they are modified or vacated at the instance of the appellants or Bhagwati Developers. The course of action adopted by the Calcutta High Court was in consonance with the notion of judicial propriety. Therefore, Bhagwati Developers cannot invoke the doctrine of comity of jurisdictions of the Courts for seeking continuance of the receiver appointed by the Calcutta High Court.

41. The learned Single Judge and the Division Bench of the Delhi High Court have assigned detailed and cogent reasons for appointing a receiver to take care of the suit property. The

clandestine nature of the transactions entered into between respondent No.2 and the appellants on the one hand and the appellants and Bhagwati Developers on the other would give rise to strong presumption that if a receiver is not appointed, further attempts would be made to alienate the property in similar fashion. Therefore, we do not find any valid ground much less justification to interfere with the impugned order or the one passed by the learned Single Judge of the Delhi High Court.

42. In view of the above conclusions, we do not consider it necessary to advert to the documents filed by respondent No. 1 before this Court for the first time and the additional affidavit filed by Smt. Bhanwari Devi Lodha on behalf of Bhagwati Developers.

43. In the result, the appeals are dismissed. For their contumacious conduct of suppressing facts from the Calcutta High Court and thereby prolonging the litigation, the appellants and Bhagwati Developers are saddled with cost of Rs.5 lakhs each. The amount of cost shall be deposited by them with the Supreme Court Legal Services Committee within a period of three months.

44. Since the proceedings pending before the Delhi High Court were stayed by this Court, we request the High Court to make an Endeavour to dispose of the pending suit as early as possible.

Judgment Referred

[1](1995) 6 SCC 0050
[2](1972) 2 SCC 0200
[3](1973) 2 SCC 0705
[4](1984) DLT 0162
[5](1992) 53 DRJ 0653
[6](1870) 3 MER 0441
[7](1838) 2 JUR 0962
[8](1892) 31 IR 00195
[9]AIR 1956 SC 0593
[10](1983) 1 SCC 0018
[11](1999) 2 SCC 0577
[12](2005) 6 SCC 0733
[13](2005) 11 SCC 0403
[14](2010) 7 SCC 0417
[15](2010) 8 SCC 0001
[16](1992) 2 SCC 0524
[17](1995) 3 SCC 0147
[18](1996) 5 SCC 0539

[19](2004) 1 SCC 0191
[20](2001) 6 SCC 0534