

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11029-30 OF 2018
(Arising out of SLP (C) Nos. 32725-32726/2014)

HARI MOHAN SHARMA & ANR.

Appellant(s)

VERSUS

CHARANJEET SINGH REKHI & ORS. ETC.

Respondent(s)

WITH
CIVIL APPEAL NOS. 11031-33 OF 2018
(Arising out of SLP(C) Nos. 28958-28960/2014)

J U D G M E N T

R.F. Nariman, J.

- 1) Leave granted.
- 2) In both these cases, suits for specific performance have been filed. The narrow question that arises is whether one Charanjeet Singh Rekhi and his wife - Manjit Kaur, who are Defendant Nos. 2 & 3 in SLP (C) Nos. 32725-32726 of 2014 and Defendant Nos. 1 & 2 in SLP (C) Nos. 28958-28960/2014 are persons who do not purport to be who they say they are. This arises out of I.As that have been filed by two other Charanjeet Singh Rekhis', one belonging to Moradabad and the other belonging to Uttarakhand, stating that each one of them are Defendant Nos. 1 & 2 and Defendant Nos. 2 & 3 respectively in these suits, and considering that it should conclusively be

determined as to who the correct defendants are, they are necessary parties to both specific performance suits.

3) The learned Single Judge of the High Court of Delhi, by judgment dated 05.03.2013, held that a question of mistaken identity cannot be gone into in a specific performance suit, as the persons who have filed the I.As are either necessary or proper parties to the suits for the reason that the plaintiff does not claim anything against them but only against one Charanjeet Singh Rekhi, who belongs to Delhi, and who has since died. His wife, Manjit Kaur, is no longer in India and resides in the United States. Both the I.As were, therefore, dismissed.

4) In an appeal filed to the Division Bench, this judgment was reversed stating:

“35. It is contended that the appellants are not parties to the contract and therefore, are not necessary parties in a suit for specific performance of the contract. In our view, treating the appellants as separate from Charanjeet Singh Rekhi & Manjit Kaur Rekhi would be an erroneous assumption as their application under Order 1 Rule 10(2) is premised on the basis that they are Charanjeet Singh Rekhi & Manjit Kaur Rekhi or are claiming through them. Indisputably, Charanjeet Singh Rekhi & Manjit Kaur are parties to the contract which is sought to be specifically enforced. The appellants may not have signed the contract but are claiming to be the persons who are named therein. In this situation, would it be open for the

respondents to contend that the appellants who claim to be Charanjeet Singh Rekhi & Manjit Kaur Rekhi are not parties to the contract. We think not. The very assumption that the parties to the contract are persons other than the appellants or their predecessors is the controversy that has been raised by the appellants. The only question that thus arises is whether this controversy has to be decided in the present suits or whether the appellants are to be relegated to filing separate suit(s). It is obvious that this controversy would have to be settled in order that the controversy with regard to any agreement entered into by the Charanjeet Singh Rekhi & Manjit Kaur Rekhi can be decided. Thus, in our view, it would be apposite if this controversy is decided in the present suit in order that all the disputes in the present suit can be effectively adjudicated."

5) Having heard learned counsel for the parties, we are of the view that the Single Judge is correct. The plaintiff in both the suits for specific performance is *dominus litus* and has chosen Charanjeet Singh Lekhi who resides in Delhi (since deceased) and his wife Manjit Kaur as persons against whom the *lis* exists.

6) It is clear that if ultimately it is found that there is no cause of action against either of these people, his suit will fail; or if it is found, in execution proceedings, that the aforesaid persons have nothing to do with the agreement to sell in question,

such execution proceedings will fail. That is the risk that the plaintiff takes in these matters. It is clear, therefore, that persons who state that they happen to be Defendant Nos. 1 & 2 and Defendant Nos. 2 & 3 respectively in the two suits are persons who have to take independent proceedings against the said defendants and/or the plaintiff if they allege collusion between the plaintiff and the defendants.

7) Learned counsel appearing on behalf of the respondents has supported the impugned judgment and has cited to us a judgment dated 04.10.2007 in Civil Appeal No. 117 of 2001 titled Sumtibai & Others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors. in which this Court has stated that there can be no absolute proposition that whenever a suit for specific performance is filed, a third party can never be impleaded in that suit. These observations were made in the context of a sale deed that had been entered into with one Kapoor Chand and his two sons. After Kapoor Chand died, his two sons wished to take up certain additional pleas in an additional written statement sought to be filed by them. This was ultimately allowed by this Court, stating that the registered sale deed itself shows that the purchaser was not Kapoor Chand alone, but also his sons as co-owners. Hence, *prima facie*, the sons of Kapoor Chand are also co-owners of the property in dispute and, therefore, have some semblance of title. It was in this fact

situation that the judgment in Kasturi vs. Iyyamperumal and Others, (2005) 6 SCC 733 was distinguished.

8) We are of the view that the aforesaid judgment has no application on the facts of the present case. The case pleaded before us is that the person mentioned as Defendant Nos. 1 & 2 and Defendant Nos. 2 & 3 in the two suits are, in fact, the persons mentioned in the two I.As. This being clear, the plaintiff in the specific performance suit has no *lis* against such persons, and have chosen to have a *lis* only against Defendant Nos. 1 & 2 and 2 & 3 (original).

9) This being the case, it is clear that the persons in the I.As are neither necessary nor proper parties in the present adjudication.

10) The appeals are, accordingly, allowed and the Division Bench judgment is set aside and restored to that of the single Judge.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(NAVIN SINHA)

New Delhi;
November 16, 2018.