

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W.P. No.30112 of 2021

Muhammad Yousaf
Versus
Additional District Judge, Ferozewala,
District Sheikhpura & others

J U D G M E N T

Date of hearing: 05.10.2021.
Petitioner by: M/s. Mian Asmatullah and Mian Khursheed Ali Zafar, Advocate.
Respondents by: Mr. Sarfraz Ahmad Bhatti, Advocate for respondent No.3.
Nemo for respondent No.4.
Research by: Mr. Muhammad Imran Sh. Addl. District Judge / Senior Research Officer, LHCRC
Mr. Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has challenged the vires of judgment dated 18.03.2021, passed by learned Additional District Judge, Ferozewala, whereby revision petition filed by respondent No.4 against order dated 14.01.2021, passed by learned Civil Judge, Ferozewala, was accepted and respondent No.4 was directed to be impleaded as party to the suit.

2. Brief facts of the case are that petitioner filed a suit for possession through specific performance of agreement to sell dated 25.09.2019 against respondent No.3. During proceedings of the suit, respondent No.4 filed application under Order I Rule 10 C.P.C., for impleading him as party to the suit, which was contested by petitioner as well as respondent No.3 by filing respective written replies. Learned Trial Court, after hearing arguments from both sides, dismissed the said application vide order dated 14.01.2021. Feeling aggrieved, respondent No.4 assailed said order before

learned Additional District Judge by filing revision petition, which was allowed vide judgment dated 18.03.2021. Hence, instant petition.

3. Learned counsel for petitioner submits that respondent No.4 has no locus standi to file application to implead him as party. He adds that aforesaid application was filed with active connivance of respondent No.3, who is his paternal uncle. He further submits that suit property has already been partitioned through a family settlement among the co-sharers including respondent No.4 much prior to agreement to sell in question and co-shares, including petitioner and respondent No.4, are owners in possession of their respective shares. He argues that petitioner has also raised constructions over his share by spending a huge money from his pocket. He maintains that material aspects of the matter have not been properly appreciated by learned Revisional Court, hence, impugned judgment is unsustainable in the eye of law. He has referred to Muhammad Baqar v. Mst. Ghulam Parwar & others (2017 SCMR 1062).

4. Conversely, learned counsel for respondent No.3 defends the impugned decision and submits that learned counsel for petitioner has failed to point out any illegality or legal perversity in the same.

5. Arguments heard. Available record perused.

6. In the instant case, petitioner has sought enforcement of an agreement to sell according to which respondent No.3 allegedly agreed to sell his some landed property in petitioner's favour. Respondent No.4 had appeared with the stance that being owner in joint *Khewat* he was also to be impleaded in the suit. The question for determination before this Court is whether in the given circumstances, respondent No.4 could be treated as necessary or proper party to the lis. Needless to say that a party, without whose absence a suit cannot be proceeded with and a final and binding decree cannot be passed, is called "necessary party". A person whose presence is necessary for the adjudication of all issues and

matters involved in the suit and whose interest in or against the relief or the subject matter of the suit may be marginal, nominal, limited or none, is a “proper party”. A person against whom no relief is asked for could hardly be a necessary party but may be a proper party. Another difference between the effect of non-impleadment of a necessary or a proper party is that a suit in which a necessary party is not impleaded, is bad while a suit in which a proper party is not impleaded, is not bad. In the case in hand, if petitioner succeeds in getting a decree of specific performance, it would not prejudice ownership rights of respondent No.4. Furthermore, there is no legal hurdle in proceeding with the suit without impleading respondent No.4 and his presence is also not necessary to settle points of controversy between petitioner and respondent No.3, thus, he is neither necessary nor proper party to the suit. Reference can be made to Muhammad Arif and others v. District and Sessions Judge, Sialkot and others (2011 SCMR 1591), Muhammad Ayub v. Lahore Development Authority and others (2000 MLD 1809), Lahore Cantt. Cooperative Housing Society Ltd. through Secretary v. Muhammad Anwar and 11 others (2007 CLC 160), Muhammad Shaukat and others v. Ghulam Muhammad and others (2013 CLC 135), Abdul Jabbar and 8 others v. Ghulam Mustafa and 6 others (2019 CLC 704) and Ali Asghar v. Raja M. Siddique and others (2021 CLC 1348).

7. It is settled law that a vendee purchasing property from a co-sharer, who owns an undivided joint *Khata*, is clothed with the same rights in the property, no more or no less than that of the vendor. If the vendor was in exclusive possession of a certain portion of the joint land and transfers its possession to the vendee, so long as there is no partition between the co-sharers, the vendee must be regarded as stepping into the shoes of the transferor qua ownership rights in the joint property, to the extent of the area purchased, provided that the area in question does not exceed the share which the transferor owns in the whole property.

Alienation of specific portion to the vendee would only entitle the latter to retain ostensible possession till such time as an actual legal partition by metes and bounds takes place between the co-sharers. Reference can be made to Syed Shabbir Hussain Shah and others v. Asghar Hussain Shah and others (2007 SCMR 1884), Zardad Khan v. Mst. Safia Begum (1998 CLC 2006), Abdur Rehman v. Muhammad Siddique through L.Rs. (2006 MLD 442), Munawar Hussain and 2 others v. Amanat Ali and 6 others (PLD 2007 83), Nisar Akbar Khan and 15 others v. Jamal Nasir Khan and 4 others (2014 CLC 254), Ansar Iqbal and others v. Muhammad Ahsan Khan and others (2021 CLC 1394).

8. In view of the above, instant petition is **allowed** and impugned judgment dated 18.03.2021, passed by learned Appellate Court is set-aside and order dated 14.01.2021, passed by learned Trial Court is restored.

(Muhammad Sajid Mehmood Sethi)
Judge

Sultan