

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1342 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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AJMERHA HOUSING CORPORATION

Versus

AMRIT M PATEL -DECD.THRO'HEIRSMEENAL AMRIT & 2 ORS.

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Appearance:

Mr S N Shelat for Ms V D Nanavati for petitioner

Mr S B Vakil for respondents

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/03/98

ORAL ORDER

Heard the learned Advocates for the parties. The  
petitioner, M/s. Ajmera Housing Corporation, Bombay,  
third party to Suit No.1761/88 has filed this Revision  
Application under section 115 CPC, against order dated

1.8.1996 passed by the City Civil Judge, Court No.18, Ahmedabad, whereby the learned Judge rejected the application Exh.136 of the petitioner refusing to add or substitute the applicant as plaintiff and dismissed the suit as withdrawn.

2. In the City of Ahmedabad, there is property bearing FP.545 of TP Scheme No.3, Ellisbridge, near the V.S. Hospital, measuring 1934 sq.metres. The said property belonged to deceased Arjunbhai. In the year 1982, deceased Arjunbhai (hereinafter referred to as the owner and the deceased plaintiff-Amrit N Patel (hereinafter referred to as 'the builder') entered into an agreement to develop the suit property and the terms and conditions were reduced to writing on 4.2.1982. The owners had also executed an irrevocable Power of Attorney in favour of the deceased-plaintiff for the purpose of development of the suit property. However, due to the provisions of the Urban Land Ceiling Act, 1976 (for short, 'the Act') and due to some disputes regarding some conveyance, neither the agreement was executed nor the development was carried out as stipulated in the agreement dated 26.2.1988. The plaintiff-builder and the petitioner third party entered into an agreement by which the development rights were entrusted to the third party. It appears that some disputes arose between the owners and the deceased plaintiff on account of the provisions of the ULC Act and as such the deceased plaintiff filed suit for specific performance on 8.4.1988. During the pendency of the suit, the plaintiff died on 18.4.1995. His legal representatives were brought on record. On 23.5.96 on the basis of a compromise entered into between the legal heirs of the deceased plaintiff and the defendant, application Exh.125 was moved for withdrawal of the suit. On 3.6.1995, the present petitioner-third party filed an application purported to be an application under section 146 CPC read with Order 1 Rule 10 and under Order 22 Rule 10 CPC for substitution in place of deceased plaintiff-Amrit N Patel or alternatively to be joined as plaintiff in addition to the heirs of the deceased-plaintiff as co-plaintiffs.

2. It is contended by Mr S N Shelat, learned Sr.Advocate for the applicant third party that in view of the agreement dated 26.2.1988, the applicant stepped into the shoes of the deceased plaintiff. The plaintiff entrusted the development rights to the applicant third party. The applicant agreed to make payment to the deceased plaintiff by instalments and accordingly the full and final payment was made in the year 1989. He further submits that the Power of Attorney executed

coupled with the interest constituted the equitable assignment. Mr Shelat referred to section 15 of the Specific Relief Act and submitted that a contract is enforceable even by assignee like the applicant third party who has interest in the performance of the contract. He has referred to a decision of the Apex Court, in the case of T M BALAKRISHNA MUDALIAR v. M SATYANARAYANA RAO, reported in AIR 1993 SC 2449. On the other hand, it is contended by Mr S B Vakil, learned Advocate that the agreement dated 26.2.1988 by which the development rights are said to have been entrusted is an independent transaction. He read before me the agreement. It is submitted that the agreement does not provide for any assignment of title or interest in the petitioner. It is further submitted that without consent of the defendant, the plaintiff could not have assigned any right in the property. It is lastly contended that in a suit for specific performance, the third party cannot be joined as a party.

3. The first and foremost question which arises for determination is as to whether the agreement of 1988 provides for assignment in favour of the applicant third party of all the rights ? The word "assignment" has not been defined under any of the relevant law. Therefore, the dictionary meaning of the word should prevail.

In the Murray's dictionary, the word assignment is indicated to mean, "to transfer or normally to make over to another".

According to Wharton's, the word "assign" denotes "generally to transfer property specially personal asset or set over a right to another" In Concise Oxford dictionary, the word "assign" is indicated to mean 'transfer of properties or rights'.

Similarly, in a dictionary of Modern Legal Usages by Bryan A Garner, the word "assign" and "assignee" means "one to whom the property rights or powers are transferred by another" in Black Law Dictionary, "assign" means "to transfer, make over or set over to another".

In Encyclopaedia Britannica II Volume, "assignment" means "in law, denotes a transfer or rights, particularly with reference to intangible property, whether or not evidenced by a speciality, such as an insurance policy or a certificate of corporate shares."

Thus, the word "assignment refers to transfer of rights or the conveyance of rights. It means appointment of a person by another to do any act or perform any business coupled with right, title or interest in things. This may be by deed or may be by law.

3. In the instant case, having read the entire agreement of the year 1988, I do not find any clause which provides or which may even be construed as transfer of rights by the plaintiff in favour of a third party with respect to the suit property. The agreement of course provides

"that the builder shall entrust development rights and ultimately shall sell, transfer and convey the suit land to the developers and the developers shall purchase the development rights in respect of the suit land and ultimately shall purchase the suit land free from all encumbrances from the building at a lumpsum price of Rs.8,50,000/- which price has been agreed to pay by the developers to the builders."

At the first instance, in my view, the plaintiff had no right to assign the benefits or liabilities to any person with respect to the suit property without the consent of the original owner namely; deceased Arjunbhai. Secondly, the said agreement is an independent agreement between Amrit N Patel and the third party petitioner. It does not transfer or assign any right, title and interest of the liabilities of the plaintiff-Amrit N Patel under the agreement of 1982.

4. It is contended that during the pendency of the suit for specific performance, with a view to show the bonafides at the instance of the deceased plaintiff, the petitioner third party deposited an amount of Rs.21 lakhs before the trial court for grant of interim relief. He further submitted that irrevocable Power of Attorney coupled with payment of Rs.21 lakhs constitutes the equitable assignment of the development rights in favour of the applicant third party. There is no substance in this contention. As per the record, Rs.21 lakhs was deposited by the plaintiff in his name and it is irrelevant as to whether the petitioner had advanced the said amount to the plaintiff.

5. In the case of JUGALKISHORE SARAF v. RAW COTTON CO., reported in AIR 1955 SC 376, the Court said that to

attract principles of equitable assignment of decree, there must be an agreement to transfer the decree to be passed in future. The Court also observed that if there is no agreement between the parties to transfer the future decree the equitable principle cannot come into play at all. I have read the authority carefully. In my view, this judgment in no way advance the case of the petitioner.

6. In the case of SHETH LOON KARAN v. I E JOHN, reported in AIR 1969 SC 73, the Court, on the facts of the case, found that the transaction entered into under the document amounts to equitable assignment. This case is also of no help to the petitioner.

7. The third case relied upon by the learned Advocate for the petitioner is a decision in the case of T M BALAKRISHNA MUDALIAR v. M SATYANARAYANA RAO, reported in AIR 1993 SC 2449 is also of no help. In the said case, the court held that the assignee was entitled to enforce the contract by filing suit for specific performance in view of the provisions of Section 15 of the Specific Relief Act. In the present case, as I have held, there is no assignment. The authority cited is of no help to the petitioner.

8. The learned Advocate has also relied upon a decision in the case of CHIRANJILAL SHRILAL GOENKA through L.Rs. v. JASJIT SINGH & Ors., reported in JT 1993 (2) SCC 341 wherein it is held that the term 'legal representatives' includes executor, administrators, assignees or persons who have acquired interest by devolution under Order 22 Rule 10 of CPC. This case is also of no help to the petitioner as the basic element of "assignment" in favour of the petitioner is missing.

9. Lastly, the learned Advocate has relied upon a decision in the case of NEVILLE v. FRESER, reported in AIR 1994 Nagpur 137 wherein, the Court has held that an assignee pendente lite, is not bound to file an application during the pendency of the suit, if his interest is protected. It is only when he finds that his interest is in jeopardy and not likely to be protected by the assignor that it is necessary for him to apply for leave to continue the suit by or against him. This authority is of no assistance of the petitioner for two reasons. Firstly, that there is no assignment and secondly even if there is any assignment, the same is not pendente lite.

10. Section 146 of the CPC cannot be attracted or

invoked by the applicant in the present case as the said section is introduced with the object of facilitating the exercise of rights by persons in whom they came to be vested by devolution or assignment. As I have already found, there is no assignment and hence the application of the third party under section 146 is not maintainable. So far as Order 22 Rule 10 of CPC is concerned, it applies where there is assignment, creation or devolution of any interest during the pendency of the suit. It is not in dispute that the subject agreement is of 26.2.1988 whereas the suit was filed on 8.4.1988. Therefore, at the first instance, there is no assignment and even if there is, it is not during the pendency of the suit. Thus, the application of the third party under Order 22 Rule 10 CPC is not maintainable. Similarly Order 1 Rule 10 of CPC can also be not pressed into service. The Apex Court in a case reported in 1992 (2) SCC 524 has held that unless it can be shown that the person has direct interest in the subject matter, he cannot be said to be a necessary or proper party. In the instant case, the suit for specific performance is with respect to the agreement dated 8.2.1982. The petitioner third party is not a party to the said agreement. In view of this, the petitioner's application under Order 1 Rule 10 of CPC is also not maintainable.

11. In view of the aforesaid, there is no merit in this Revision Application and the same is rejected in limini.

Mr S N Shelat, learned Advocate submits that the interim relief granted may be continued for a further period of four weeks as the petitioner intends to approach the Supreme Court. This prayer is being opposed by Mr S B Vakil, learned Advocate for the respondents. Considering the facts and circumstances of the case, the interim relief granted earlier is extended for a further period of 4 weeks, i.e. upto March 30, 1998.

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