

CR-252-2013 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-252-2013 (O&M).
Decided on: April 8, 2015.**

Rohtas Kumar and others

..... Petitioners

Versus

Satparkash and others

..... Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Chanderhas Yadav, Advocate,
for the petitioners.**

**Mr.Ajay Shekhawat, Advocate,
for respondent Nos.1 & 2.**

**Mr.Vikas Bishoi, Advocate,
for respondent Nos.3 & 4.**

Respondent No.5, deleted.

M.M.S. BEDI, J (ORAL).

This is plaintiffs' revision petition filed against the order passed by the trial Court dismissing their application under Order 1 Rule 10 CPC for impleading Director of Suman Villas Private Limited as additional defendant on the ground that defendant Nos.3 & 4 had sold the suit property to the said company, claiming that the said company would be a necessary party required to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The trial Court dismissed the application on the ground that the plaintiffs-petitioners want to prolong the proceedings.

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Brief facts, relevant for the decision of the present revision petition, are that the plaintiffs have filed a suit for specific performance against defendant Nos.1 & 2 for specific performance of agreement of sale regarding the property mentioned in para 1 of the plaint on the basis of agreement of sale dated 14.6.2005 and the sale deed was to be executed on the date fixed for registration i.e., 14.10.2005. It was pleaded that the defendants Nos.1 & 2 have executed an illegal sale deed dated 21.12.2005 in favour of defendant Nos.3 & 4 regarding the land in dispute. The plaintiffs sought cancellation of the sale deed dated 21.12.2005 and possession of the property by a decree of specific performance of the agreement of sale. During pendency of the suit, defendant Nos.3 & 4, alienated the suit land vide sale deed dated 24.3.2006 in favour of Subhash Chand, Director, Suman Villas Private Limited, as such application under Order 1 Rule 10 CPC was filed to implead him as defendant No.5 in the capacity as Director of the Company vide Annexure P2. The execution of the sale deed in favour of Director, Suman Villas Private Limited, has not been denied by the defendants. While dismissing the application under Order 1 Rule 10 CPC, the trial Court has observed that the factum regarding alienation of the property in dispute in favour of Director, Suman Villas Private Limited, was in the knowledge of the plaintiffs on 28.7.2009 when written statement was filed but no steps were taken to implead the said company as defendant No.5.

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Counsel for the petitioners has submitted that the presence of above said company as defendant is necessary for complete and effectual adjudication of the dispute even if no relief is claimed against the defendant, sought to be added, as he is a necessary party and his presence is required for effective adjudication.

I have heard the counsel for the petitioners as well as the counsel for the respondents and I am of the opinion that the right of the plaintiffs in their suit for specific performance regarding their entitlement to get the sale deed executed in their favour regarding the property in dispute is essential. The defendant No.5 is alleged to have become owner by virtue of a registered sale deed whereas the sale deed in favour of his vendors dated 21.12.2005 is already subject matter of the suit. It is not doubted that the alienation of the property during pendency of the suit is always subject to the principle of lis pendens. Similar question came up before Hon'ble the Apex Court in **Amit Kumar Shaw and another Vs. Farida Khatoon and another, 2005 (2) RCR (Civil) 651**, wherein by an order the High Court had rejected the application for substitution of transferees pendente lite in the second appeal. Hon'ble the Apex Court held that the Court has got discretion in the matter to implead such a person but an alienee would ordinarily be joined as a party to enable him to protect his interest and that the transferee pendente lite can be added as a proper party if his interest in the subject matter

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of the suit is substantial. A transferee pendente lite of an interest in movable property is representative-in-interest of the party from whom he has acquired that interest. Hon'ble the Apex Court has observed that the presence of the alienee was absolutely necessary as he was the only person who has got subsisting right, title and interest in the suit. In the said case Hon'ble the Apex Court was dealing with the matter in which the property had been transferred during pendency of the suit. In the present case, the plaintiffs-petitioners appear to have filed a suit on 17.10.2008 challenging the validity of sale deed in favour of defendant Nos.3 & 4. In the application filed under Order 1 Rule 10 CPC, it has been claimed that the plaintiffs came to know about the sale deed dated 24.3.2006 executed by defendant Nos. 3 & 4 in favour of defendant No.5, on 10.5.2012 during pendency of the suit.

Without expression of any opinion regarding the authenticity of said plea, it is sufficient to observe that the defendant No.5 is projected to be a person at present in possession of the property in dispute. Even if it is presumed that he had acquired right, title and interest and possession in the property prior to the filing of the suit, he appears to be a person whose presence is necessary for complete and effectual adjudication of the dispute as he is a necessary party without whom, it will not be possible for complete adjudication of the dispute.

Hon'ble the Apex court in **Kasturi Vs. Iyyamperumal and others (2005) 6 SCC 733**, considered the scope of addition of a party in a suit for specific performance of contract and decided the question as to who would be a necessary party in a suit for specific performance of contract. Relevant extract of the aforesaid judgment is reproduced below:-

“7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the Civil Procedure Code 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 regulate 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.

8. We may look to this problem from another angle. Section 19 of the Specific Relief Act provides relief against parties and persons claiming under them

by subsequent title. Except as otherwise provided by Chapter II, specific performance of a contract may be enforced against :

“19.(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value of who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.:

9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do

not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act.

10. That apart, from a plain reading of Section 19 of the Act we are also of the view that this Section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.”

10. In view of the provisions as contained in section 19 (b) of the Specific Relief Act, the subsequent transferee is a necessary party as this question that whether the subsequent transferee purchased the property for value and paid the money in good faith and without notice of the original contract is to be decided in his presence.”

The Hon'ble Apex court in a subsequent decision in **Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Private Limited and others (2010) 7 SCC 417,** following the judgment in **Kasturi's** case (supra) held that the parties to a contract which is sought to be enforced or their legal representatives and the transferee of the property which is the subject matter of the contract are the necessary parties in a suit for specific performance of the contract. It is not out of place to observe here that Hon'ble the Apex court has observed in said judgment that in case the plaintiffs makes an application for impleadment of a person being a necessary party, the Court can implead him having

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regard to the provisions of Rules 9 and 10 (2) and Order I. If the claim against said person is barred by limitation, the Court has got jurisdiction to refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

Whether the claim of the plaintiffs-petitioners against the defendant sought to be added as a party will be barred on the date of filing of application for impleadment or at the time of filing of suit is not required to be decided in the present petition. The same is left open. However, this court is of the opinion that in order to avoid multiplicity of litigation after decision of the case of plaintiffs-petitioners regarding suit for specific performance and to avoid delay by taking subsequent objections in execution in the eventuality of the suit being decreed, the impleadment of Director of Suman Villas Pvt. Limited is necessary for effective and complete adjudication and to settle all the questions involved in the suit. As such, in the exercise of powers under Order I Rule 10 CPC, said defendant is a necessary party which will be required to be impleaded without prejudice to the right to raise the plea of limitation which is left open at this stage.

The petition is allowed. The application for impleadment of defendant No.5 as a party to the suit is allowed. It is observed that no doubt the impleadment at this stage will cause delay but the ends of justice would be adequately met in case the suit is decided in the presence of the person who has got a right, title and interest in the property on the basis of registered sale deed.

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The parties are directed to appear before the trial Court for further proceedings in accordance with law on 23.5.2015 or the date already fixed whichever is earlier.

April 8, 2015.
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(M.M.S. BEDI)
JUDGE