

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3183 of 2015 (O&M)

Date of Decision.21.05.2015

Suleman (now deceased) through LRs

.....Petitioner

Versus

Mehmooda and others

.....Respondents

Present: Mr. Amit Arora, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. In suit for specific performance that was decreed in favour of the present petitioners, the defendants were the vendors and the subsequent purchaser. Against the decree for specific performance, vendors had preferred the appeal arraying the plaintiffs as well as the subsequent purchaser as respondents. The subsequent purchaser appears to have filed a cross-objection in the appeal filed by the vendors and when an objection was taken by the plaintiffs that a cross-objection cannot be filed by person in the appeal filed by a co-defendant and that it should have been only by means of his own appeal, which was not done, the memorandum of cross-objection appears to have allowed to be dismissed. Subsequently the subsequent purchaser has filed an application for transposition as appellant and the appellants-vendors have given no objection for the same and the transposition was allowed without considering the objection given by the plaintiffs.

2. Learned counsel appearing on behalf of the plaintiffs-respondents in appeal has the objection that the subsequent purchaser had only a right of appeal against the decree for specific performance which was originally ordered and same having not been done, he would be barred from arraying himself as appellant later. The contention is that the appeal should have been filed within a period of 30 days from the time when the decree was passed and the transposition is sought more than the period of 30 days and therefore, it cannot have been entertained.

3. I have seen through the judgment of the trial Court. There has been a common line of defence by the defendants namely the vendors as well as the subsequent purchaser and they had no conflict of interest between themselves. The subsequent purchaser's right could have been left to be decided even in the appeal filed by the vendors and the Court could have considered the issue of the validity of such a subsequent sale and enforceability of the agreement in the manner canvassed by the vendors in appeal by suitably invoking the provisions of Order 41 Rule 33 CPC and considered the rights of the subsequent purchaser. A cross-objection was certainly not maintainable but if there is no conflict of interest between the vendors and the subsequent purchaser and vendors have preferred an appeal, there could be no bar for subsequent purchaser from securing an appropriate order from Court for transposition to contest the appeal along with the appellants. The appellants have expressed that they have no objection. What could have been done even without transposition can be permitted to be done by the respondents. I will find no particular prejudice as having been

caused to the plaintiff to come before this Court in revision.

4. The revision petition is dismissed.

(K. KANNAN)
JUDGE

May 21, 2015
Pankaj*