

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3374 of 2013 (O&M)

Date of Decision: January 14, 2015

Jagjit Singh

...Petitioner

Versus

Gurdeep Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. S.K. Mahajan, Advocate
for the petitioner.

Mr. K.R. Dhawan, Advocate
for respondent Nos.16 and 17 in CR No.3374 of 2013 and
for respondent Nos.9 and 10 in CR No.3381 of 2013.

R.P. Nagrath, J.

By this common order, CR No.3374 of 2013 and CR No.3381 of 2013 are being disposed of as there are similar questions of facts and law involved in both these petitions.

2. In CR No.3374 of 2013, petitioner and respondents No.10 to 15 filed a suit for possession by way of specific performance of agreement to sell dated 26.10.1990 for directing defendant No.1- Joginder Singh (since deceased) to execute the sale deed in respect of 8 kanals 01 marla 06 Sarsahi of the land being 161/5823 share of the land measuring 291 kanals 03 marlas of land as mentioned in

the head note of the plaint. In CR No.3381 of 2013 the suit was filed by petitioner and respondents No.7 and 8 for specific performance of agreement to sell of the same date i.e. 26.10.1990 executed by the aforesaid Joginder Singh in respect of 8 kanals 01 marla 06 Sarsahi being 161/5823 share of the land measuring 291 kanals 03 marlas of the land.

3. Notice of motion was issued to applicant-respondents No.16 and 17 in CR No.3374 of 2013 who are respondents No.9 and 10 in CR No.3381 of 2013. The petitioner is plaintiff No.5 with respondents No.10 to 15 as co-plaintiffs in CR No.3374 of 2013 and in CR No.3381 of 2013, the petitioner is plaintiff No.2 and respondent Nos.7 and 8 the co-plaintiffs. The facts are being extracted from CR No.3374 of 2013.

4. Petitioner has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 03.05.2013 (Annexure P-1) passed by the trial Court whereby the application of respondents No.16 and 17 for being impleaded as defendants being assignees/transferees of the suit property has been allowed.

5. The plaintiffs filed suit for specific performance of agreement to sell dated 26.10.1990 executed by Joginder Singh who was impleaded as defendant No.1 in the suit. Admittedly Joginder Singh-defendant was served for 19.02.1996 and appeared through Shri S.S. Bal, Advocate. Joginder Singh was proceeded against ex parte on 27.07.1998. Joginder Singh had become the owner of

1/12 share in the land measuring 291 kanals 3 marlas by virtue of a decree dated 25.8.1982 in a suit titled **Joginder Singh versus Mohinder Singh etc.** In the said suit Darbara Singh, the predecessor of the plaintiffs and Desa Singh, predecessor of the other defendants were original defendants. Aforesaid Darbara Singh and Desa Singh filed RSA No.384 of 1984 against the decree dated 25.8.1982 against Joginder Singh which was dismissed by this Court on 17.7.2009. After the dismissal of the RSA, mutation on the basis of decree dated 25.8.1982 was sanctioned in favour of Joginder Singh. Joginder Singh had died on 13.10.2010 and in his place respondents No.1 to 3 were impleaded as his legal representatives.

6. It was stated in the application filed by respondents No.16 and 17 under Order 1 Rule 10(2) CPC that respondents No.1 to 3 sold the entire land measuring 24 kanals 5 marlas being 1/12 share out of 291 kanals 3 marlas vide two separate sale deeds dated 09.02.2012 i.e. each sale deed for 1/24 share in this land in favour of Davinder Singh-respondent No.16 who in turn sold 8 kanals of the land to respondent No.17-Amrik Kaur vide sale deed dated 16.02.2012. Davinder Singh further sold 4 kanals of land to respondents No.17 vide another sale deed dated 09.04.2012. It was stated that Joginder Singh was an old and sick person and could not pursue the case. His legal representatives, namely, respondents No.1 to 3 had no knowledge of the pendency of the suit or the agreement to sell and respondents No.16 and 17 claimed themselves to be bonafide purchasers for value and without any

notice of the present suit. They claimed that their rights are protected under the Transfer of Property Act and prayed to be impleaded as necessary parties also seeking permission to file written statement and to contest the suit.

7. It was stated that legal representatives of Joginder Singh received the summons in the month of March/April, 2012 on application of plaintiffs for restoration of the suit and came to know that the suit had been adjourned sine die on 22.04.2010 (it seems that the case was adjourned sine die in 2000 because the RSA pending was decided on 17.07.2009). It was also stated that since the legal representatives of Joginder Singh are not left with any interest in the suit property, they have refused to appear and contest the suit. The applicants are said to have fallen into the footsteps of Joginder Singh and being the necessary parties moved an application under Order 1 Rule 10 of the Code of Civil Procedure. Copy of the said application is Annexure P-2.

8. Reply filed to the application is Annexure P-3 and it was stated that respondents No.16 and 17 were having knowledge of pendency of the suit from the very beginning. Amrik Kaur-respondent No.17 is mother-in-law of Davinder Singh-respondent No.16. It was stated that the houses of plaintiffs Sajjan Singh etc. are situated in the fields within the area of village Rode Jalle wala, Tehsil Zira. Respondent No.16 belongs to village Mallu Walie Wala. The boundaries of these villages abut each other. Houses of the plaintiffs are situated merely at a distance of 10 acre of the house of

Davinder Singh. Even the possession of the disputed land is recorded in the name of plaintiffs.

9. Learned counsel for the parties have been heard and I have perused the impugned order and the paper book.

10. The learned trial Court while allowing the application observed as under: –

“Thus, in view of the case law relied upon by counsel for the applicants, it is held that interest of the applicants in the subject matter of the suit is substantial as they have claimed to step into the shoes of legal heirs of Joginder Singh by whom two separate sale deeds dated 9.2.2012 were executed in favour of Davinder Singh in respect of entire land; measuring 1/24 share each of 291 kanals 3 marlas and Davinder Singh has further sold land measuring 8 kanals and 4 kanals vide two separate sale deeds dated 16.2.2012 registered on 17.2.2012 and dated 7.3.2012 registered on 9.4.2012 in favour of applicant Amrik Kaur. Presence of applicants before the Court is found to be necessary in order to adjudicate the controversy with regard to the agreement to sell in question dated 26.10.1990, especially when, it is alleged by the applicants that now the legal heirs of Joginder Singh have refused to contest the present case as they have left with no title and interest in the suit land.”

11. Permitting impleadment of respondents No.16 and 17 as

parties in terms of Order 1 Rule 10 of the Code of Civil Procedure is against the settled principles of law. The only course open to the trial Court was to allow these respondents to continue to defend the suit by stepping into the shoes of the party assigning property, in terms of Order XXII Rule 10 of the Code of Civil Procedure. By impleading these respondents in terms of Order 1 Rule 10 of the Code of Civil Procedure, the respondents can claim the right to defend the suit as original defendants and file their own written statement to challenge the agreement to sell and all the previous proceedings, whereas these respondents could be permitted to defend the case at the stage when they had applied to become a party. It is admitted proposition of fact that Joginder Singh-defendant No.1 appeared in the suit through Shri S.S. Bal, advocate on 19.2.1996 and he was proceeded ex-parte on 27.7.1998. If Joginder Singh filed written statement, the subsequent assignees could contest the suit on the basis of defence set-up therein but the matter cannot be re-opened just because respondent Nos.16 and 17 purchased the land in the year 2012 in the suit pending since the year 1995.

12. This Court had the occasion to deal with a similar situation in ***Jagdish Chander and another Vs Om Piari and others, 2008(2) Civil Court Cases 176 (P&H)***. In that case, suit was filed on 18.5.2006 for declaration to the effect that the plaintiffs were owner in possession of the suit property on the basis of Will dated 17.07.1985 executed by their father. The learned trial Court vide order dated 18.05.2006 directed the parties to maintain status

quo with regard to alienation of suit property. A sale deed was executed by original defendant in favour of respondents No.4 and 5 even before the injunction granted on 18.5.2006 could be served. It was held by this Court as under: –

*“10.....A considered appraisal of the provisions of Order 1 Rule 10 of the CPC, Section 52 of the Transfer of Property Act, as also the above judgments i.e **Sanjay Verma's case (supra)**¹ and **Sunil Gupta's case (supra)**², as also the judgments referred to therein, leaves no manner of doubt that a transferee pendente lite, without leave of the Court, is neither a necessary nor a proper party and cannot, therefore, be impleaded as a party to a pending lis, by invoking the provisions of Order 1 Rule 10 of the CPC. The fact that the vendor may not take further interest in the matter is irrelevant, as such a consideration would not alter the status of a vendee pendente lite. In view of the principles of law, noticed herein above, it would have to be held that a vendee pendente lite is neither a necessary nor a proper party, under Order 1 Rule 10 of the C.P.C to the pending lis. The learned trial Court, therefore, had no jurisdiction to entertain and allow respondents No.4 & 5 to be impleaded as defendants by relying upon the provisions of Order 1 Rule 10 of the C.P.C.”*

13. This Court, however, further observed in **Jagdish**

¹ Sanjay Verma Vs. Manik Raj & others, 2007(1) RCR(Civil) 408

SURESH KUMAR, Sunil Gupta Vs. Kiran Girhotra & others, 2007(4) RCR(Civil) 553
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Chander's case (supra) that there is another aspect arising from the provisions of Order XXII Rule 10 of the Code of Civil Procedure which says in sub-rule (1) that in other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. It was held that Order XXII Rule 10 of the CPC deals with a situation, wherein pending a lis, a party assigns property or during the pending lis, an interest is created in or devolves upon a person not arrayed as a party. Such a person may, subject to the discretion of a Court, file an application praying that he be arrayed as a party, whether as a plaintiff or a defendant subject to his establishing assignment, creation or devolution of any interest in the suit property during the pendency of the suit. The words and expressions appearing in Order XXII Rule 10 of the CPC unlike the words and expressions used in Order 1 Rule 10 of the CPC, permit the suit to be continued by or against the person to or upon whom such interest has come to be assigned or devolved, subject as always to the judicial discretion of a Court. It is, therefore, apparent that the assignee of suit property, pending adjudication of a lis, cannot be impleaded as a party under Order 1 Rule 10 of the CPC but may be allowed to continue or defend the suit under Order XXII Rule 10 of the CPC, by stepping into the shoes of the party assigning property to him.

14. By making the aforesaid observation, this court in **Jagdish Chander's case (supra)** allowed the revision and the

impugned order was set aside. However, subsequent transferees, namely, respondents No.4 and 5 were given the liberty to file an application under Order XXII Rule 10 of the Code of Civil Procedure before the trial Court. This is what the petitioner has precisely contended before this Court.

15. In ***Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. And others, 2013(5) SCC 397***, appeal before Hon'ble Supreme Court was filed against the order of Division Bench of Delhi High Court affirming the order of Single Judge and rejecting the petition filed by appellant under Order 1 Rule 10 of the Code of Civil Procedure for impleadment as defendants in a suit for specific performance filed by plaintiff-respondent No.1. The agreement to sell in question was dated 29.05.1986 and suit for specific performance was filed in the year 1991. The sale deeds by the vendor in favour of the appellant were executed in the year 2001. The question posed by Hon'ble Supreme Court was whether if the appellant who is the transferee pendente lite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendants.

16. The Hon'ble Supreme Court had taken note of the broad principles governing disposal of application for impleadment as laid down in ***Vidhur Impex and Traders Pvt. Ltd. Vs. Tosh Apartments Pvt. Ltd., 2012(8) SCC 384*** as under: –

“Though there is apparent conflict in the observations

made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.

2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

17. The Hon’ble Supreme Court held that no one other than parties to an agreement to sell is a necessary and proper party to a suit. On the facts of that case, Hon’ble Supreme Court further held as under: –

“1) The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

(2) The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

(4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.”

18. Therefore, the appellants could pursue only such defences as were available and taken by the original defendants and none other.

19. The other judgement relied upon by learned counsel for respondents No.16 and 17 is also to the same effect with regard to impleading the respondents in terms of Order XXII Rule 10 of the Code of Civil Procedure and under Order 1 Rule 10 of the Code of Civil Procedure. That is reported in ***Amit Kumar Shaw and another Vs. Farida Khatoon and another, 2005(11) SCC 403***. It was held by Hon'ble Supreme Court that an alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10 of the CPC. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed. Hon'ble Supreme Court further held as under: –

“16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the

litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order XXII Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.

17. In the instant case, the applications for substitution were filed by the respective appellants in the second appeals which are still pending on the file of the High Court though it was filed in the year 1993. The appellants have properly, sufficiently and satisfactorily explained the delay in approaching the Court. We see bona fide in their explanation in not coming to the Court at the earliest point of time. Therefore, the appellants who are

transferees pendente lite should be made as parties to the pending second appeals as prayed for by them. In our opinion, the High court has committed serious error in not ordering the applications for substitution filed by the appellants. In our view, the presence of the appellants is absolutely necessary in order to decide the appeals on merits. Since the High Court has committed error by rejecting the appellants' applications for substitution treating the same as additional parties and thereby rendering the appellants non-suited. We have no hesitation in setting aside the said orders and permit the appellants to come on record by way of substitution as prayed for. The High Court proceeded on a wrong premise that the appellants had made the application for addition of party whereas the application under consideration was for substitution as the owner had sold the suit property to the appellants and had no interest in the pending litigation."

20. That was a case in which the assignees came into picture during pendency of the appeal.

21. In view of the aforesaid discussion, both the petitions are allowed and the impugned order is set aside with liberty to respondent Nos.16 and 17 in CR No.3374 of 2013 and respondent Nos.9 and 10 in CR No.3381 of 2013 to move an application before the trial Court in terms of Order XXII Rule 10 of the Code of Civil

Procedure for being substituted in place of original defendant i.e. defendant No.1 or legal representatives of deceased defendant No.1. On moving such an application which the respondents may file within a period of one month, the trial Court would proceed to decide the said application, in accordance with law.

January 14, 2015
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(R.P. Nagrath)
Judge