

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

C.R. No.4137 of 2015 (O&M)

Date of Decision.06.07.2015

Amar Chand

.....Petitioner

Versus

Charan Singh Bhatia and others

.....Respondents

Present: Mr. Mansur Ali, 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. The revision petition is against the order allowing for impleadment of a subsequent alienee of the suit property and for amendment of the plaint therefor. The amendment was brought in suit for Specific Performance of alleged oral agreement of lease in relation to a brick kiln where after the conclusion of the lease period of 10 years, the plaintiff was setting up a plea of oral arrangement for continuance of lease. According to the defendant, the lease had expired even one year prior to the institution of the suit and subsequent to the expiry of the lease, he had taken possession of the property and had also obtained the revenue entries changed in his own name. The defendant's contention was that there was no oral agreement of lease and the plaintiff had no possession in relation to the same.

2. The Court had allowed for impleadment of a third party who was said to be subsequent alienee from the owner-defendant. The objection taken was that the application was moved after the issues were

framed and even at the time when the issues were framed, the plaintiff had not stated that the plaintiff continued in possession of the property and that the defendant had taken possession from the plaintiff only after the institution of the suit. The Court had allowed for impleadment of third party on the averments made by the plaintiff and it is against this order that the defendant is in revision before this Court.

3. Learned counsel for the petitioner states that the impleadment ought not to have been ordered in such a situation where the plaintiff has no possession of the property and that his plea that the plaintiff's possession was taken from the defendant after the institution of the suit could not have been accepted by the Court below.

4. The issue whether the possession was taken by the plaintiff after the institution of the suit or the whether the defendant as owner had already taken back possession after the completion of the lease period through the registered instrument will be matters that will be considered at the time of suit. This will become relevant in view of the alleged oral lease propounded by the plaintiff and the Court will consider whether there such an oral lease and whether the property was retained by the plaintiff at the time of institution of the suit and after the completion of the lease period. If, according to the plaintiff, there had been a subsequent transaction and bringing a third party's interest at the instance of the owner, it would be relevant for adjudication regarding such a transaction also in the light of the judgment of the Supreme Court in Thomas Press (India) Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. AIR 2013 SC 961. The subsequent purchaser which the law contemplates under Section 19 of the Specific Relief Act is a person who holds a subsequent interest prior to the institution of suit. This is how it has been

normally understood by the Supreme Court itself in several decisions including the decision in Vidur Impex & Traders (P) Ltd. Vs. Tosh Apartments (P) Ltd. AIR 2012 SC 2925. However, the Supreme Court has been liberal in Thomas Press (India) Ltd. (supra) has allowed even a subsequent alienee after the institution of the suit as a proper party to the proceeding, though the law of *lis pendens* itself will take care of such a situation and impleadment is not at all times necessary.

5. The intervention in the revision petition ought to be confined only to patently illegal orders under Article 227 of the Constitution and if there is an order passed by the Court below which can be legally supported through a decision of the Supreme Court itself, I will find no cause for intervention. I maintain the same and dismiss the revision petition. None of these observations, be it stated, will operate against the merits of the contentions which the defendant may take up at the time of his pleadings or additional pleadings arising out of the amendment and impleadment and for final adjudication of the trial of the suit.

(K. KANNAN)
JUDGE

July 06, 2015
Pankaj*