

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

1. C. R No. 4816 of 2015 (O&M)

Prem SinghPetitioner

versus

Manmohan Singh and anr. ...Respondents

2. C.R. No. 5268 of 2015

Labh Singh and anotherPetitioners

versus

Mohinder Singh and anr. ...Respondents

Date of decision : 14.12.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Paramdeep Singh, Advocate
for the petitioner in C.R. No. 4816 of 2015.

Mr. G.P.S. Bal, Advocate
for the petitioner in C.R. No. 5268 of 2015.

Mr. Rahul Sharma, Advocate
for respondent No. 1 in C.R. No. 4816 of 2015 and
for respondent No. 2 in 5268 of 2015

Mr. S.S Siao, Advocate
for respondent No. 1 in C.R. No. 5268 of 2015 and
for respondent No. 2 in 4816 of 2015

RITU BAHRI, J. (Oral)

This order of mine shall dispose of the above two petitions

wherein challenge is to the order dated 25.05.2015 passed by learned Addl. District Judge, Ludhiana. However, for the facility of reference, the facts are being taken from C.R. No. 4816 of 2015.

Brief facts of the case are that a suit was filed by Manmohan Singh against Mahinder Singh for specific performance of agreement to sell dated 31.03.2005 regarding property measuring 21B-2B situated at village Raigarh, Tehsil Payal, District Ludhiana and in the alternative suit for recovery of Rs.42,20,000/-. The suit was decreed in favour of Manmohan Singh-respondent No. 1, vide judgment and decree dated 13.12.2013. Thereafter, respondent No. 1 filed an appeal against the above mentioned judgment and decree. In the meantime, Prem Singh and Labh Singh filed their separate applications for impleading them as party on the ground that Prem Singh was claiming that plaintiff-respondent No. 1 in connivance with defendant-respondent No. 2 had got decree dated 13.12.2013 with regard to agreement to sell dated 31.03.2005. It has been averred that respondent No. 2 has transferred the land comprised in Khasra No. 464(4-5), 465(4-17), Khata No. 63/485 in favour of Prem Singh, vide registered sale deed bearing Wasika No. 435 dated 28.05.2008 for a sale consideration of Rs.7,68,000/- without disclosing about agreement to sell dated 31.03.2005. Further the possession of the said land measuring 9B-2B was delivered to Prem Singh. The mutation had also

been sanctioned in favour of Prem Singh.

Similarly, Labh Singh averred that respondent No. 2 has transferred the land comprised in Khasra No. 464(6-5), 466(5-15), Khata No. 63/485 in favour of Labh Singh, vide registered sale deed bearing Wasika No. 2233 dated 13.10.2011 for a sale consideration of Rs.30,60,000/- without disclosing about agreement to sell dated 31.03.2005. Further the possession of the said land measuring 12B-0B was delivered to Labh Singh.

Both the applicants come to know about the pendency of litigation between the respondents when they enquired from Halqa Patwari regarding the clear title of the owner and seller and the seller Smt. Sheela Rani and her attorney Anish Kumar and thus, they filed the applications for impleading them as party.

The lower Appellate Court dismissed the applications filed by the applicants.

Learned counsel for the petitioners submit that the applications filed by the petitioners should have been allowed as they had purchased the land from respondent No. 2 and they were not aware about the pendency of litigation between the respondents.

On the other hand, learned counsel for the respondents has referred to a judgment of Hon'ble the Supreme Court of India in a

case of ***Thomas Press (India) Ltd. Nanak Builders & Investors P.***

Ltd and others, 2013(2) RCR (Civil) 875 wherein an 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. In para 53 and 54 , it has been observed as under:-

53. A simple reading of the above provision would show that in cases of 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. What has troubled us is whether independent of Order 1 Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above

provisions and, if so, whether the appellant could be added as party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant and if so, on what terms.

54. We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In ***Khemchand Shanker Choudhary v. Vishnu Hari Patil, 1983 (1) SCC 18***, this Court held that the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or proceeding. Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:-

“6 Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of CPC clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate Court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. Any heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree.

preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out.”

The aforesaid judgment has been followed by this Court in a case of **Jagjit Singh vs. Gurdeep Kaur** passed in C.R. No. 3374 of 2013, decided on 14.01.2015. In para 19 of the judgment, it has been observed as under:-

*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.”

This Court in a case of ***Sunita Devi v. Pawan Kumar and another, 2015(1) PLR 599*** by following the ***Thomson Press case (supra)*** held that breach of injunction may incur liability but sale remains valid, subject to directions issued by the competent Court against the vendor. Dismissal of application under Order 1 Rule 10 for impleading of pendente lite transferee may be proper, but prayer could be allowed by invoking the provisions of Order 22 Rule 10 CPC and the petitioner was substituted under Order 22 Rule 10 CPC.

Thus, the ratio of law laid down in the aforesaid judgments “mutatis mutandis” is fully applicable to the facts of the present case and is the complete answer to the problem in hand and the contrary submissions of learned counsel for the respondents “stricto sensu” deserve to be and are hereby repelled under the present set of circumstances.

No other legal point, worth consideration, has either been

urged or pressed by the learned counsel for the parties.

In the facts of the present case, the applicants have purchased the property after the decree was passed in the year 2011 and they filed their separate applications for impleading them as a party after the suit filed by respondent No. 1 against respondent No. 2 was passed in favour of respondent No. 1 and an appeal filed by respondent No. 2 against respondent No. 1.

Keeping in view the fact that property has been purchased by the vendees during the pendency, sale itself will not become void. The sale deeds will remain valid but it will be subject to determination of dispute by the Court. Therefore the present petitioners are to be substituted/impleaded.

Applying the ratio of the above mentioned judgments, the present petitions stand disposed of by giving a liberty to the petitioner to file an application under Order 22 Rule 10 CPC for substituting/impleading them in place of original defendant before Addl. District Judge, Ludhiana. It is further observed that Addl. District Judge, Ludhiana shall not pass any final order for the next 10 days to enable the petitioners to make their suitable applications from the date of receipt of certified copy of this order.

14.12.2015
G Arora

(RITU BAHRI)
JUDGE

GAURAV ARORA
2015.12.18 16:28
I attest to the accuracy and
integrity of this document