

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 5493 of 2015 (o&m)

Date of decision : 20-11-2015

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M/s Sapphire Infratech Pvt. Ltd.

.....Petitioner

Versus

Tatvadarshi Bandhu Private Limited and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. B.S Khehar, Advocate for the petitioner.

Mr. Vikram Bali, Advocate for
respondents no. 1 to 3, 4(ii), 4 (iii) and 5.

Mr. Jagdish Manchanda, Advocate for LRs
of respondent no.6.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

Present petition has been filed under Article 227 of the Constitution of India for setting aside the orders dated 22.9.2014 passed by the Civil Judge Jr. Division. Faridabad (Annexure P-7), whereby the application filed by the petitioner under Order 22 Rule 10 read with Section 151 Code of Civil Procedure has been dismissed and the order dated 24.7.2015 (Annexure P-9) passed by the Additional District Judge, Faridabad, whereby the appeal filed by

the petitioner against the order dated 22.9.2014 has been dismissed.

The plaintiff-Company/respondent no.1 filed a suit for declaration and permanent injunction declaring that the impugned lease deeds as stated by defendant no.2 Brijbhan in the written statement Annexures D-1 to D-35 in respect of khasra Nos. 1388, 1389, 1390 and 1408 as illegal, unlawful, void ab initio, fictitious and fraudulent documents, situated in the revenue estate of Village Anangpur and further for permanent injunction restraining the defendants, their employees, agents etc. from interfering in the peaceful possession of the plaintiff over the suit land. In the civil suit, the stand taken by Brijbhan-defendant no.2 was that he is lessee in possession along with co-sharer Amarjit Singh now dead and that the property was purchased by him vide registered deeds (Annexures D-1 to D-35) and mutations (Annexures D-36 to D-65) of specific numbers were sanctioned by the revenue authorities.

During the pendency of the civil suit, the present petitioner M/s Sapphire Infratech Private Limited purchased the leasehold rights in respect of the suit land vide registered sale deed of leasehold rights bearing document no. 20028 dated 1.12.2008, 20026 dated 1.12.2008, 20023 dated 1.12.2008 and 20394 dated 4.12.2008 from defendants no. 2 and defendants no. 4 to 7 and Smt. Surinder Kaur.

That the petitioner herein moved application under Order 22 Rule 10 read with Section 151 CPC for impleading and substituting of the petitioner in place of defendant no.2, 4 to 7(i.e

respondents no. 8,10 to 13) inter alia claiming that the petitioner having purchased the leasehold rights vide aforesaid registered sale deeds is entitled to defend the suit.

On notice of the application, the plaintiff-respondent no.1 denied the averments and took the objection of lis pendens. It was further submitted that the suit was instituted on 6.1.2006. On 16.3.2006, the injunction application moved on behalf of the plaintiff was allowed. An appeal was preferred against the said order before the Additional District Judge, Faridabad who was pleased to pass an order of status quo on 6.3.2009. During the pendency of the status quo order, the present petitioner i.e M/s Sapphire Infratech Private Limited in 2008 purchased the leasehold rights from the defendants. The sale deed was executed in violation of this Court's order. The applicant M/s Sapphire was not in physical possession of any portion of the land. Moreover, no permission was obtained from the Court before execution and registration of alleged sale deed in favour of the applicant.

To the aforesaid application, defendant no.2 Brijbhan filed reply wherein he stated that he has no objection to the present petitioner being impleaded and substituted in place of defendant no.2. Defendants no. 4 to 7 also filed reply wherein they also stated that they had no objection to the present petitioner being impleaded and substituted in their place.

The trial Court vide order dated 22.9.2014 vide Annexure P-7 dismissed the application of the applicant. It was observed by

the trial Court that it is the discretion of the Court to allow the application under Order 22 Rule 10 and the judicial discretion must also be exercised keeping in view the conduct of the parties. As held by the trial Court there was no reasonable cause which would compel this court to exercise its jurisdiction under Order 22 Rule 10 as the applicant had failed to show as to why they kept silence since 2008. The petitioner had not acquired absolute rights of the suit property as the transferee obtained leasehold rights to the suit property from its transferor. The main question for consideration and decision before the Civil Court was that to adjudicate whether the transferrer had right to transfer this property or to sale out his leasehold rights over the suit property or not. A subsequent purchaser does not get any right to be impleaded as a party as he would step into the shoes of his vendor and cannot claim any independent or more rights than his vendor. He will sink and swim with their vendors in litigation. He can only watch the interest of their vendors in litigation from whom they have purchased the land during the pendency of the suit as contemplated under Order 22 Rule 10 CPC and doctrine of lis pendens is fully attracted in such cases. The application of the petitioner was hit by Section 52 of the Transfer of Property Act. The vendors i.e respondent no.8 and LRs of late Amarjit Singh impleaded as respondents no. 10 to 13 are duly represented the case of the appellant before the trial Court. In the present case, the leasehold rights were purchased by the petitioner in the year 2008 and the present application under Order 22 Rule 10 CPC has been made on

18.8.2014 after gap of almost six years and this delay has not been properly explained and has been taken to be valid ground for disallowing the application.

Feeling aggrieved the petitioner/applicant filed appeal against the order of the trial Court. Vide order dated 24.7.2015, the appellate Court dismissed the appeal of the petitioner/applicant and upheld the order of the trial Court by observing that unexplained delay on the part of the petitioner/applicant was a valid reason for disallowing the application of the petitioner/applicant.

Heard counsel for the parties. It is not a dispute between parties that in 2008 the petitioner/applicant purchased the leasehold rights from the defendants. Counsel for the petitioner, Mr. B.S Khehar, has argued that after purchasing the leasehold rights they were delivered the possession and in view of the fact that the defendants have raised no objection, the application should be allowed. Counsel for the petitioner relied on **Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and others (2013) 5 SCC 397** to contend that where the transferor/purchaser has purchased the leasehold rights of the entire property from the vendors he would be a necessary party in the suit as the defendants from whom he purchased the leasehold rights will not properly defend the suit. He will collude with the plaintiff. In this case, respondent no.1-plaintiff filed a suit for specific performance on 1.11.1991 against the defendant for the specific performance of the agreement to sell/contract for sale dated 29.5.1986. in the said

suit the defendant stated that till disposal of the suit, the property in question would not be transferred or alienated by the defendant. The defendant also filed a written statement in the said suit. However, while the said suit was pending in between 31.1.2001 and 3.4.2001 five sale deeds were executed by defendant in favour of the present appellant. On the basis of those sale deeds the petitioner moved an application under Order 1 Rule 10 CPC, 1908 for impleadment as defendant in the above said suit for specific performance filed by respondent no.1. It was not in dispute that before the institution of the suit for specific performance, respondent no.1-plaintiff had got a notice published in the newspaper on 12.2.1990 regarding the agreement to sell dated 29.5.1986 being in existence in its favour. The Supreme Court observed that even if the property had been purchased in violation of the interim orders since transferee had purchased entire land which formed the subject matter of the suit, he was entitled to be added as a party to the suit. The appellant was held entitled to pursue only such defences as were available and taken by the original defendants and none other.

Counsel for the respondent on the other hand has argued that the application has been rightly dismissed by both the Courts as there was no explanation for the delay in making such application as the transfer took place in the year 2008 and the application had been filed in the year 2014. He has referred to the judgments ***Dhanna Singh vs. Baljinder Kaur 1997(2) RCR (Civil) 701,*** ***Sukhdip Singh vs. Arjan Singh Mihan Singh and another 1961***

AIR (Punjab) 326, Raj Kumar vs. Sardari Lal and others 2004(2) SCC 601 and Akka Bai and another vs. Gowrawwa 1990 AIR (KARNATAKA) 278 to contend that in case of assignment, creation or devolution of any interest during the pendency of any suit, Order 22 Rule 10 CPC confers a discretion on the Court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record the lis pendens transferee remains bound by the decree.

In the present case, the petitioner/applicant had purchased the leasehold rights from the defendants. He had not acquired the absolute rights of the property as transferee. Moreover, there is a violation of the status quo order dated 6.3.2009 passed by the Additional District Judge. There is violation of the injunction order passed on 16.3.2006 where the defendants were restrained from transferring the property in dispute. No permission was obtained from the Court in registration or execution of the sale deed in favour of the alleged applicant. The lower Appellate Court while dismissing the appeal of the petitioner had made reference to the judgments in the cases of ***Bhagwani and another vs. Mehar Singh and others 2014(3) Civil Court Cases 460 (P&H), Dhanna Singh vs. Baljinder Kaur 1997(2) Apex Court Journal 150 (SC) and Jaswinder Singh vs. Sohan Singh and others 2005(1) PLR 593*** wherein it has been consistently held that a subsequent purchaser

does not get right to be impleaded as a party. He will merely step into the shoes of the vendor and cannot claim any independent or more rights than vendor. While interpreting the provisions of Section 52 of the transfer of Property Act in the case of **Sanjay Verma vs. Manik Roy and others, AIR 2007 SC 1332**, it has been held that a transferee pendente lite is bound by the decree just as he was a party to the suit. As per the objects and principles specified in Section 52 of the Transfer of Property Act, mere pendency of the suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.

The judgment cited by the counsel for the respondent in the case of **Akka Bali's case (supra)**, wherein an application for impleadment had been made after five years when the litigation was at the fag end, the application was rejected. In paragraph 10 of this judgment while referring to the judgment in the case of **Allah Jawaya vs. Lajpat Rai, AIR 1925 Lahore 574**, it was observed as under:

“Where the factum of the assignment was disputed and the application for substitution of assignee was made months after the assignment was alleged to have been made. Held: that the Court should use its

discretion which it has under the rule, properly to reject the application”

In the present case, the suit was instituted in the year 2006 and whereas the leasehold rights were purchased by the applicant in the year 2008. Application for impleadment has been made in the year 2014 after a gap of almost six years. Both the Court have rightly exercised their discretion in dismissing the application as there was no explanation for the delay in making the above said application. Trial was at the fag end and if the application was allowed it would reopen the entire case.

The judgment in the case of ***Thomson's case (supra)*** will not be of any help to the petitioner as in that case when the suit was filed by Nanak Builders and Investors Private Limited on 1.11.1991 for specific performance of the agreement to sell dated 29.5.1986 against defendant-Sawhneys there was an interim direction that the defendant will not transfer or alienate the property. However, defendant Sawhneys had taken a loan from Vijaya Bank. In the year 1977, a suit filed by the Bank was decreed on 14.10.1998 and recovery certificate was issued by DRT, Delhi. LMI, a group company of the Thomson Press (India) Limited intervened and settled the decree by agreeing to deposit the loan amount of Rs.1.48 Crores and in this context five sale deeds were executed by defendant Sawhneys in favour of M/s Thomson Press India Ltd. Thereafter the present application under Order 1 Rule 10 CPC for impleadment was filed. In these circumstances, their impleadment

was sought to be necessary while exercising discretion under Order 22 Rule 10. However, in the facts of the present case after purchasing the leasehold rights, the suit was filed in the year 2006 and the leasehold rights were purchased in the year 2008. For six long years, the present applicant-petitioner did not chose to file any application for impleadment as the defendant in the suit. Moreover, the leasehold rights were purchased in violation of the trial Court order dated 16.3.2006. The petitioner-applicant had not acquired the absolute rights of the property and gave no explanation for six long years delay in filing application. The facts and the circumstances in which the application for impleadment was allowed in the case of ***Thomson's case (supra)*** are not applicable in this case. There is no illegality or infirmity in the judgments passed by the Courts below. Both the Courts have rightly exercised their discretion while dismissing the application.

In view of all that has been discussed above, present revision petition is dismissed.

20-11-2015
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(**RITU BAHRI**)
JUDGE