

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

**CR No.6218 of 2013
Date of decision : 21.09.2015**

Vivek Malhotra

....Petitioner

Versus

Babu Lal Sharma & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. Aashish Chopra, Advocate
for the petitioner.

Mr. M.L.Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate
for the respondents.

K.Kannan, J. (Oral)

The petitioner is a purchaser of the property in suit that was decreed ex parte in favour of the plaintiff. There was an application for setting aside the order ex parte decree by the first defendant while defendants No.2 & 3 had preferred an appeal. The purchaser filed an application for setting aside the ex parte decree before the trial court and filed also an application for impleadment in the appeal against the ex parte decree filed by defendants No.2 & 3. The application for impleadment in the proceedings under Order 9 Rule 13 was dismissed and the revision confirmed that order. The application in appeal was also dismissed subsequently and the revision is against the said order.

Counsel would rely on the decision of the Hon'ble Supreme Court in ***Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd. & ors. 2013(2) RCR (Civil) 875*** that allowed impleadment to be brought in a suit for specific performance after the suit was instituted by a person and when there was an order of

injunction restraining the same. The person that filed an application, therefore, was a person, who was clearly drawn to the principle of lis pendens and would not have qualified even as a subsequent purchaser in the manner contemplated under Section 19 of the Act. It could have been well argued even then that the purchaser during the courts' order of restraint could have been proceeded against even for contempt. But the Supreme Court was prepared to extend the benefit of impleadment by invoking Order 1 Rule 10 and held that it is an enabling provision and a person could be brought in, having due record to the facts and circumstances of one case. This judgment of the Supreme Court literally sets farthest tether of discretion to a court depending on the facts and circumstances.

The petitioner is in a far better position. The sale effected pendente lite is not to be commented adversely, for, there is no statutory interdict against sale by a person who is facing a litigation. On the other hand, the doctrine is to ensure that there is no fresh adjudication brought at the instance of the purchaser and he will have to be bound by the consequences of whatever results at an adjudication made in the presence of his vendor. The doctrine therefore, is an essential rule of procedural justice. The purchaser, therefore, does not reopen the issues, which are already decided and takes such benefit or detriment that vendor is subjected to. The provision under Order 22 Rule 10 CPC brings another dimension of allowing even a purchaser or assignee of an interest of a property in suit to be brought in than being shown the door through the doctrine of lis pendens. This is only to ensure that the vendor, who has sold the property does not give a go-by or walk over to the other camp and put the purchaser at risk. This provision is to enable the purchaser

pending suit to come on record and protect his interest of what is possible for the vendor himself to do. This is to obviate to chance of collusion of the vendor with the adversary to the detriment of the purchaser.

When ex parte decree was passed and on application filed by the defendant, there had been stay of the operation of the decree, it only meant the decree could not have enabled the decree-holder to put it to execution and secure possession in the manner canvassed in suit or exercise any right as such decree-holder. The stay of the operation of the decree can hardly mean any interdict against sale.

It will be wrong in my view, to characterise the purchaser for consideration from the decree-holder as not bona fide or as any person, who cannot be heard. A person, who has parted with more than 55 lacks cannot be forced to sit on the fence and see the proceedings of the Court; rather, he has right to protect himself and ensure that vendor does not walk to the opposite camp but supports his title. That opportunity ought to, if not already provided in the application under Order 9 Rule 13, be available in the appeal, which is pending at the instance of the defendants No.1 & 2.

I set aside the order subject only to the condition that the petitioner pays Rs.10,000/- as costs to the contesting respondent before this Court within four weeks.

The revision petition is allowed.

21.09.2015
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(K.KANNAN)
JUDGE