

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No. 237 of 2016

Kamlesh Keshari S/o. Madan Chand Keshari, Aged About 48 Years
 R/o. Deviganj Road, Ambikapur, P.S. & Post. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....(Plaintiff)

---- Petitioner

Versus

1. Smt. Malti Devi W/o. Madan Chand Keshari, Aged About 68 Years

.....(Defendant No.1)

2. Dinesh Kumar Keshari, S/o. Madan Chand Keshari, Aged About 44 Years

.....Defendant No. 2

No.1 & 2 R/o. Deviganj Road, P.S., P.O. & Tahsil Ambikapur, Civil Revenue District Surguja (CG)

3. Madan Chand Keshari S/o. Late Ramdayal Sao, Aged About 73 Years R/o. Kedarapur, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....Defendant No. 3

4. Mohan Lal Santwani S/o. Bhag Chandra Santwani, Aged About 62 Years

.....Defendant No. 4

5. Jitendra Relwani S/o. Kanhaiya Lal Relwani, Aged About 35 Years

-----Defendant No.5

No.4 & 5 R/o. Maharaja Gali, (Sindhi Colony), Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja Chhattisgarh.....Defendant No. 5

6. Sardar Mahendra Singh Tuteja S/o. Sardar Ranjeet Singh Tuteja, Aged About 48 Years R/o. Mohalla Babupara, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District Surguja, Chhattisgarh.....Defendant No. 6

7. Ashok Kriplani S/o. Late Sugnamal Kriplani, Aged About 40 Years

.....Defendant No. 7

8. Preetam Kriplani S/o. Late Mathuramal Kriplani, Aged About 46 Years

.....Defendant No. 8

9. Vijay Poptani S/o. Shaukin Das Poptani, Aged About 35 Years

-----Defendant No.9

No.7 to 9 R/o. Sindhi Colony, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh

- 10.** Manish Kumar Gupta S/o. Krishna Prasad, Aged About 40 Years R/o. Deviganj Road, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....Proposed Defendant No. 10
- 11.** Madhusudan Prasad Shukla S/o. Devi Prasad Shukla, Aged About 41 Years R/o. Sheetla Ward, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja Chhattisgarh.....Proposed Defendant No. 11
- 12.** Harmindar Singh S/o. Balkishan Singh, Aged About 39 Years R/o. D.C. Road, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....Proposed Defendant No. 12
- 13.** Rajeev Kumar Gupta S/o. Shree Kanth Prasad Gupta, Aged About 37 Years R/o. School Road, Ambikapur, P.S., P.O. Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....Proposed Defendant No. 13
- 14.** Roshan Kumar Gupta S/o. Late Banshidhar Gupta, Aged About 28 Years R/o. Deviganj Road, Ambikapur, P.S., P.O. & Tahsil. Ambikapur, Civil & Revenue District. Surguja, Chhattisgarh.....Proposed Defendant No. 15

---- Respondents

For Petitioner	:	Mr.Priyanka Mehta, Advocate
For Res.No.1 & 2	:	Mr.Nishikant Sinha, Advocate
Res.No.3	:	Mrs.Hamida Siddique, Advocate
Res.No.4, 5, 7 and 9	:	Mr.P.K.Patel, Advocate
Res.No.10	:	Mr.Bhupendra Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/11/2016

1. The petitioner/plaintiff filed a suit for declaration of title, partition and separate possession on 3.8.2005, in which defendant No.3 filed his written statement on 23.8.2005. During pendency of the suit, defendant No.3 sold some part of suit land by registered sale deed dated 30.1.2014 and 28.1.2014 and transferred some land by registered agreement dated 10.10.2011 and 11.6.2006, therefore, the petitioner/plaintiff made an application under Order 1 Rule 10 of the CPC that defendants No.10 to 15 be added as the defendants in the suit.

2. The trial Court by the impugned order rejected the application finding that such an application cannot be allowed in view of Section 52 of the Transfer of Property Act.
3. Feeling aggrieved and dissatisfied with the order rejecting the application under Order 1 Rule 10 of the CPC, the petitioner has filed this writ petition under Article 227 of the Constitution of India.
4. Ms Priyanka Mehta, learned counsel appearing for the petitioner, would submit that defendant No.3 has transferred the land during pendency of the suit, therefore, on the principle of doctrine of lis pendens, they are necessary party and therefore, the order be set aside.
5. Mrs.Hamida Siddique, learned counsel appearing for respondent No.3, would oppose the writ petition and support the order impugned.
6. Mr.Bhupendra Singh, learned counsel appearing for respondent No.10 would submit that subsequent purchaser is not necessary party in the suit and therefore, the writ petition be dismissed.
7. I have heard learned counsel appearing for the parties, perused the order impugner and documents appended with the petition.
8. It is not in dispute that during pendency of the suit defendant No.3 has sold some portion of the suit land by registered sale deed dated 30.1.2014 and 28.1.2014 to the proposed defendants and also executed registered agreement dated 10.10.2011 and 11.6.2006 in favour of some of the proposed defendants.

9. At this stage, it would be appropriate to notice Order 1 Rule 10, Order 22 Rule 10 of the CPC and Section 52 of the Transfer of Property Act which read as under:-

Order 1 Rule 10

“10. Suit in name of wrong plaintiff.- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties— The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun

only on the service of the summons.”

Order 22 Rule 10

10. Procedure in case of assignment before final order in suit.- (1) 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.

(2) The attachment of a decree pending an appeal there from shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

Section 52 of the Transfer of Property Act

52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

10. The Supreme Court in the matter of **Amit Kumar Shaw and another Vs. Frida Khatoon and another**¹ considered the combined effect of Order 1 Rule 10, Order 22 Rule 10 of the CPC and Section 52 of the Transfer of Property Act and held as under:-

“14. 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 O 1 Rule 10. 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.

15. Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a Court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
5. Such transfer must affect the rights of the other party that may ultimately accrue under

¹ (2005) 11 SCC 403

the terms of the decree or order.

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."

11. In the aforesaid case, the Supreme Court has clearly mandated 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.

11. The trial Court at the time of considering the application has not considered the above-stated principles and rejected the application for impleading the proposed defendants No.10 to 15,

who are purchasers during pendency of the suit, as parties.

12. Consequently, the order impugned rejecting the application under Order 1 Rule 10 of the CPC is hereby set aside and application under Order 1 Rule 10 of the CPC is allowed. The petitioner/plaintiff is directed to implead the proposed defendants within a period four weeks from the date of appearance before the trial Court i.e. 13.12.2016 and thereafter the trial Court shall proceed in accordance with law.

13. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-