

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

**CR No.4830 of 2016 (O&M)
Decided on: 29.07.2016**

Kamaldeep Singh

....Petitioner

Versus

Madhu Jolly and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Pardeep Kumar, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to order dated 15.07.2016 (Annexure P-4) passed by the Civil Judge (Jr. Division), Ludhiana whereby application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure (in short 'CPC') for being impleaded as a party in civil suit No.135 of 2011 titled '*Smt. Madhu Jolly vs Mohan Lal and another*' has been dismissed.

Madhu Jolly, the respondent/plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 27.08.2008 in regard to house measuring 57 sq. yds., detailed in headnote of the plaint (Annexure P-1). The suit was contested by Mohan Lal – defendant/respondent No.2 and has reached the stage of rebuttal and arguments.

The present petitioner filed an application under Order 1 Rule 10 read with Section 151 CPC for impleading him as a party on the premise that the suit property has been sold by Sh. Mohan Lal to the petitioner vide sale deed dated 14.09.2012 and he being *bona fide*

purchaser of the suit property having interest therein is entitled to be impleaded as a party. It has further been averred that a suit has been filed by Seema Juneja, wife of Mohan Lal Juneja against the petitioner and in the said suit, file of the present case was summoned from which the petitioner gained knowledge about pendency of the present suit and filed the application without delay.

Counsel for the petitioner has submitted that as the petitioner has purchased the suit property and would be adversely affected in case suit filed by the respondent/plaintiff is decreed, he is entitled to be impleaded as a party in the suit. It is further argued that the learned trial Court committed a gross error rather illegality in dismissing the application on the basis of assumptions and presumptions by holding that plea of the applicant that he was not in knowledge of pendency of the suit is devoid of merit.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

A plain reading of the impugned order would make it evident that there is no dispute that the petitioner purchased the suit property during pendency of the suit instituted in August, 2011 by way of registered sale deed dated 14.09.2012. The question with regard to right of a transferee *pendente lite* to be impleaded as a party in a pending suit is no longer *res integra* in view of authoritative enunciation of law laid down by Hon'ble the Apex Court in ***“Thomson Press (India) Limited vs Nanak Builders & Investors Private Limited and others”*** 2013(2) RCR (Civil) 875, wherein after noticing previous

judgments pertaining to interpretation of Section 52 of the Transfer of Property Act particularly the judgment “***Amit Kumar Shaw vs Farida Khatoon***”, 2005(2) RCR (Civil) 651 has held that a transferee *pendente lite* is entitled to be impleaded in the suit or other proceedings and where the transferee *pendente lite* is made a party to the litigation, he is entitled to be heard in the matter on merits of the case. It appears that as the judgment in Thomson Press (India) Limited's case (supra) was not brought to the notice of the trial Court, the trial Court dismissed plea of the petitioner to be impleaded as a party. In this view of the matter, the petitioner is entitled to be impleaded as a party on the array of defendants and ordered accordingly.

Before parting with this order, it is pertinent to mention that it has been noticed by the trial Court that the suit is at its final stage being fixed for evidence in rebuttal and arguments. Perusal of the application filed by the petitioner would make it clear that no such plea has been raised by the petitioner that his vendor Sh. Mohan Lal did not contest the proceedings. The petitioner being a transferee *pendente lite*, transfer in his favour shall be subservient to the rights of the plaintiff in the suit and subject to any directions which the trial Court may eventually issue. Under these circumstances, the petitioner has been allowed to be impleaded as a defendant subject to the condition that as a result of his addition, he shall be entitled to raise and pursue only such defences as were available and taken by the original defendant and none other. It is further clarified that in the present case as the suit has already reached the stage of rebuttal evidence and arguments, the petitioner as a result of his addition as a party shall only be entitled to

be heard in the matter on the merits of the case at the time of final arguments.

The petition filed by the petitioner has been disposed of without notice to the respondent/plaintiff with a view to avoid unnecessary inconvenience to the plaintiff and delay in conclusion of the proceedings of the suit filed by the respondent/plaintiff about 4 years back. However, the respondent shall be at liberty to file an appropriate application in this Court in case she has any grievance to express.

Disposed of.

29.07.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No