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

Civil Revision No.5217 of 2013 (O&M)

Date of decision:11.05.2016

Rajbir @ Rajbir Singh

... Petitioner

versus

Baldev Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Prem Chand Chaudhary, Advocate,
for the petitioner.

Ms. Loveleen Dhaliwal, Advocate,
for the respondents/applicants.

1. Whether reporters of local papers may be allowed to see the judgment ?**Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ?**Yes.**

K.Kannan, J. (Oral)

CM No.10029-CII of 2016

This is an application to vacate the order passed by this court on 11.04.2016 directing delivery of the property to be made.

With the consent of both counsel, the civil revision itself has been taken up for consideration and the application for vacating the order already passed therefore is disposed of as having become infructuous.

Civil Revision No.5217 of 2013

I. Subject of lis: Legality of impleadment of subsequent purchasers from judgment debtor at the stage of execution

1. The revision is against an order allowing an appeal filed by a third party to the proceeding seeking for impleadment after the decree was passed. The suit for specific performance was instituted in Civil Suit No.37 of 1991 on 03.04.1991. The petitioner was the plaintiff in the suit and the relief of specific enforcement was sought against one Kuldeep Singh son of Kartar Singh and his brother-Mehtab Singh's son Inderjit Singh Jaggi. Pending suit, there was an application for restraint against alienation which the court also issued on 06.04.1991, but it would appear that in spite of an order of restraint, the defendants in suit purported to have sold the property on 26.04.1991. The purchasers were, however, not made parties and subsequently, the defendants, who had entered the contest, remained ex parte. An application to set aside the ex parte order was dismissed but later the suit for specific performance was decreed on 28.11.2002. The decree holder-petitioner filed an execution petition on 08.02.2003 to secure a sale deed and the objections taken by the judgment debtor were dismissed in the year 2004 itself and the sale deed was also executed subsequently on 23.07.2010.

II. Additional point of relevance: subsequent purchasers have elected to file also an independent suit to challenge the decree put in execution

2. The persons at whose instance the present revision arises

are admittedly purchasers pending suit and after its institution on 03.04.1991. Their purchases were also subsequent to the order of injunction against alienation passed by the court on 06.04.1991. They are reported to have filed a suit on 08.10.2008 to challenge the decree which has been passed in Civil Suit No.37 of 1991 and decreed on 28.11.2002 contending that the decree obtained was fraudulent. The said suit is said to be still pending. Respondents 1 to 4 were setting up an earlier agreement of sale to the decree holder and their contention was that their own purchase although pending suit was pursuant to a power of attorney which was executed in their favour, under the terms of which, property was also delivered possession. Without any reference to even the suit filed by them, respondents 1 to 4 moved an application for impleadment at the stage of execution for delivery of possession initiated at the instance of the decree holder under Order 22 Rule 10 CPC claiming right as assignee from the defendants in suit. There was also an application for impleading the legal representatives of the judgment debtors. Both the applications were dismissed. Respondents 1 to 4 preferred appeals under Order 43 CPC to the lower appellate court challenging the order dismissing the applications and the appellate court has allowed the impleadment. While allowing the application, the court was referring to the fact that subsequent purchaser even pending suit is a proper party to the proceeding and it would be necessary to

allow for such an application.

III. Interim direction given by this court, the basis

3. In a challenge brought to the order passed by the lower appellate court, I had noticed that the persons, who were seeking for impleadment, were actually purchasers during the pendency of suit for specific performance and their purchase was not merely hit by lis pendens but also hit by an interdict against sale passed by the trial court even prior to their purchase. Finding prima facie that there was clear obstructive tactic adopted by the subsequent purchasers after the institution of suit, I had passed an interim order allowing for delivery of possession to be taken without any obstruction. The order was passed in the presence of the counsel for the respondents 1 to 4. The application for vacating the said order is filed on a plea that respondents 1 to 4 are actually in possession of the property and the bona fides of the purchase will have to be considered at the stage of execution. Respondents 1 to 4 would reiterate an argument made before the lower appellate court and which was accepted by the lower appellate court.

IV. Decisions that allow for impleadment of purchasers pending suit

4. The appellate court has lumped references to several judgments without culling out any law and I will not feel constrained to refer to all judgments which were put in a jumble by the lower appellate court. I will take reference to the judgments

which the counsel for the respondents states as relevant and which according to her lends weight to the reasoning adopted by the court below. The court was referring to the judgment of the Supreme Court in *Azhar Sultana Versus B. Rajamani and others-2009(2) Civil Court Cases 1 (Supreme Court)* that a subsequent purchaser during the pendency of suit is also a necessary party and the plaintiff would be deemed to be aware of subsequent purchase in whose favour a sale deed was registered. Yet another decision, which has been referred to by the court below, is a decision of this court in *Gurdev Singh and another Versus Amarjit Singh and others-2011 (5) RCR (Civil) 643* that an assignee of rights even during pendency of suit has a right to be impleaded as party. Making reference to the provisions under Order 22 Rule 10 CPC, the lower appellate court was reproducing several decisions to the effect that subsequent assignee would also require to be impleaded. In my view, all the judgments cited have no application for reasons hereinafter to be stated.

V. Impleadment of subsequent purchasers, when not possible

5. It will be stating the obvious, if I observe that only a subsequent alienee or an assignee will be a person who can competently move the court for impleadment under Order 22 Rule 10 CPC. The subsequent assignee, who would require to be impleaded, would at all times be an assignee who can bring himself

on record to enter a contest before a decree is passed and after the institution of suit. It makes all the difference as to when the application can be moved by a subsequent alienee. If it is after the suit and before the decree, such an assignee steps into the shoes of a defendant and may prevent any scope for any collusion between his assignor and the plaintiff. Order 22 Rule 10 CPC can at all times therefore be invoked to protect the interest of an assignee before the decree is passed. It will mean utter travesty of justice and render relevant Section 53-A of Transfer of Property Act, if Order 22 Rule 10 CPC could be permitted to be invoked by a lis pendens purchaser at the stage of execution, that is, after the decree is passed. Order 22 Rule 10 CPC allows for impleadment to an assignee only during the pendency of a suit. The language employed under Order 22 Rule 10 CPC cannot be missed and, therefore, for emphasis, it would require to be reproduced. Order 22 Rule 10 CPC is reproduced as follows:-

“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. (underlining mine)

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the

person who procured such attachment to the benefit of sub-rule (1).”

The expression “during the pendency of suit” ought not to be understood as after the decree is passed. If a decree is passed then unless the decree is assailed in a higher forum by the defendants themselves who had suffered a decree or by any person who is aggrieved against the decree who may take leave of the court to prefer an appeal, a subsequent purchaser cannot have resort to Order 22 Rule 10 CPC or make an objection at the stage of execution. The subsequent alienee’s right gets circumscribed by whatever pleas which his own assignor-the judgment debtor could have taken. After the passing of the decree, if a judgment debtor cannot take an objection about the executability of the decree otherwise than through a challenge to the decision in appeal, the same fetter will operate against the assignee as well. A judgment debtor cannot be heard at the stage of execution of the executability of the decree except, perhaps when the decree was passed by a court which was incompetent and there was inherent lack of jurisdiction.

VI. Issue of bona fide of pendente lite purchasers is irrelevant

6. The issue of bona fides of purchase simply does not arise. The decisions which have been referred to by the court below to which I have made reference above are all decisions relating to a subsequent assignee who seeks for impleadment before the decree

was passed. There could be instances where the decree itself is challenged in appeal and being a continuation of suit, an assignee can seek for impleadment treating the suit as still pending. If a decree has been passed and the decree itself is not challenged by the judgment debtor or an assignee in an appellate forum, there is no scope for seeking for impleadment and taking an objection to hear on the bona fides of the purchase at the stage of execution.

7. There are two fundamental errors that have been committed by the court below which are supported with vehemence by the counsel appearing on behalf of the respondents. One is that the respondents 1 to 4 were not parties to the decree or suit and hence, the issue of bona fides will have to be heard. The second contention is that the purchasers were already in possession under a power of attorney and, therefore, they ought to have been impleaded and the rights of a subsequent purchaser would require to be heard. First of all, an enquiry into bona fides of purchase is irrelevant to a pendent lite purchaser as held by the Supreme Court in **Bibi Zubaida Khatoon Versus Nabi Hassan Saheb and another-2004 (1) SCC 191**. It is also wholly irrelevant that the plaintiff did not take notice of the alleged possession of respondents 1 to 4 under a power of attorney. A power of attorney creates no transfer of interest and a power of attorney sale is a legal anachronism as pointed out by the Supreme Court in **Suraj Lamp & Industries (P)**

Ltd. Versus State of Haryana and another-(2012) 1 SCC 656. The plaintiff need not take notice of any possession other than person in possession under a registered instrument which could constitute a constructive notice by virtue of the provisions of Transfer of Property Act. Any transaction which is not brought under Book-I of the Registration Act cannot evoke any constructive notice and hence, the plaintiff was competent to institute a suit only against the party who was privy to the agreement of sale. If a third party had been in possession and if that possession could be supported, it must be a possession which is recognized in the eye of law as constituting better rights than a person who filed a suit and later obtained a decree.

VII. Objections at the stage of execution by any person claiming under judgment debtor is bound to be rejected

8. The law frowns upon any objection by a judgment debtor at the stage of execution and this stringent approach through a provision of law will *a fortiori* apply to a subsequent alienee as well. Order 21 Rule 97 CPC allows for a decree holder to get an order from the court to remove any obstruction caused by a person from obtaining possession of property and enquiry that the court will consider will be only from a person who is a person claiming independent right from the judgment debtor. It is evident from the fact that a right to object through an obstruction by a pendente lite purchaser is expressly barred by virtue of Order 21 Rule 102 CPC.

Order 21 Rule 98(2) CPC also makes it clear that if the obstruction is brought at the instance of a judgment debtor or by a transferee, where such transfer was made during the pendency of suit, it shall direct the applicant (decree holder) to be put in possession of the property and if the applicant is still resisted or obstructed, the court may direct such a person to be detained in civil prison. When I passed the order on 11.04.2016, I had noticed the fact that the objection was coming forth from persons who were pendente lite purchasers and the court was unnecessarily detaining itself by impleading such subsequent purchasers, as though such subsequent purchasers had a right to be heard before the court. A subsequent purchaser who would have right of hearing before the decree is passed or when a decree was in challenge before the appellate court is not a person who could be heard in the light of the express bar found under Order 21 Rule 98(2) CPC. The court will be completely derailing the cause of justice and will engage itself in futile exercise by allowing a subsequent purchaser in entering into adjudication of the alleged bona fides of the purchase. I have already observed that the issue of bona fides is irrelevant to pendente lite transaction. All the more so, that a court should allow for an adjudication which is ex facie illegal and will give a needless shot in the arm of a person who is liable to be arrested and detained in prison for the simple act of causing obstruction. The impleadment ordered was a misdirected

sympathy for persons who were seeking for adjudication regarding bona fides when they ought to be arrested and kept inside.

VIII. No objection could be entertained at the stage of execution when decree is put to challenge in independent suit

9. There is another reason why impleadment under Order 22 Rule 10 CPC could not have been entertained. Respondents 1 to 4 have already begun their adventure of opening a new vista for themselves by instituting a suit challenging the decree as obtained by fraud. If a decree could be set aside as fraudulent, till such a decree is set aside on an alleged voidable nature of the decree, the court will be wrongly lending a premium to such a person the benefit of assumption that the decree is void. A decree lawfully passed by the court or what it appears to be so on the face of it ought to be taken to the next stage. The Supreme Court has stated in **Shub Karan Bubna alias Shub Karan Prasad Bubna Versus Sita Saran Bubna and others-(2009) 9 SCC 689** that we must fashion our execution procedure in such a way that it is not even necessary for a decree holder to apply for execution. The court that passes a decree must ensure that the decree has a meaning to a person who has obtained a decree and the process of execution must begin by the court itself in a seamless fashion. We have still a long way to traverse if the lofty expression found in the above judgments is to be brought to fruition. Here are respondents 1 to 4 who believed that by obtaining a power of attorney and possession, they obtained a right

to property itself.

IX. Disposition

10. The entire edifice of objections are frivolous and this case exemplifies yet another situation of how a lawfully obtained decree could be stultified by either clever arguments or misguided exuberance. For either reason, I will allow no hand of assistance to the third party claimant.

11. The order passed by the court making reference to the judgments which are irrelevant for an adjudication to be undertaken is bound to be set aside and accordingly set aside. The Executing Court will move coach and four to the next stage and ensure that delivery is given to the decree holder free of any obstruction and will carry out directions of what I have already given on 11.04.2016 which directed that if respondents 1 to 4 are causing any obstruction, they shall be arrested immediately. The Executing Court would carry out this direction given by this court.

12. The impugned order is set aside and the civil revision is allowed with costs of ₹3,500/- and I also impose exemplary costs of an additional amount of ₹3,500/- against the contesting respondents.

(K.KANNAN)
JUDGE

11.05.2016
sanjeev