

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

**CR No.7241 of 2016
Decided on: 21.11.2016**

M/s. Peace Buildcon Private Limited and another

....Petitioners

Versus

Pawan and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Chetan Mittal, Sr. Advocate
with Mr. Harsh Bungar, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition directs challenge against order dated 22.09.2016 (Annexure P7) passed by the Civil Judge (Jr. Division) Sohna whereby application filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure (in short 'CPC') for impleadment as a party has been dismissed.

Counsel for the petitioners has submitted that respondents No.1 to 6 (sons of Badley) filed a suit for declaration and in the alternative for possession bearing civil suit No.4 of 04.01.1999 titled Pawan and others vs Badley and others, decreed *ex parte* by the then Civil Judge (Jr. Division) Gurgaon vide judgment and decree dated 22.11.2005. In the said suit, Tek Ram (respondent No.13) was arrayed as defendant No.4 and he purchased some land, part of the suit property vide sale deed dated 16.11.1994. Tek Ram sold the land in favour of Sh. Narender Kumar Puri (respondent No.11) vide sale deed No.2612 dated 07.08.1995. Narender Kumar Puri in turn sold the land to M/s. Suncity Town Planners Private Limited vide sale deed dated 09.11.2004. M/s.

Suncity Town Planners Private Limited sold land measuring 133 kanals 17 marlas situated in village Bandhwari Tehsil Sohna in favour of M/s. Vismay Builders and Developers Private Limited – petitioner No.2 vide sale deed dated 28.09.2005. Likewise, Amarinder Singh – respondent No.15 purchased land measuring 3 bighas 12 biswas detailed in para 5 of the petition which changed hands by way of transfer as detailed in paras 6 and 7 of the petition and sale deed in respect of land measuring 81 kanals 5 marlas situated in village Bandhwari Tehsil Sohna was executed in favour of M/s. Peace Buildcon Private Limited – petitioner No.1 vide Vasika No.3698 dated 28.09.2005 and actual physical possession was delivered in favour of petitioner No.1. The petitioners have already filed an application under Order 9 Rule 13 read with Order 1 Rule 10, Order 22 Rule 10, Sections 146 and 11 CPC for setting-aside *ex parte* judgment and decree dated 22.11.2005 and the same is pending adjudication before the Court. A similar application has also been filed by one Mamta Gupta in which *status quo* regarding operation of decree dated 22.11.2005 has been passed.

The present suit for possession was filed by Pawan and others on 13.11.2006 against Narender Kumar Puri, Satish Kumar Sharma, Tek Ram, G.S. Chopra and Amarinder Singh. The petitioners came to know about pendency of the suit in February, 2013 and immediately thereafter filed the instant application (Annexure P5) for their impleadment but the same has been wrongly and illegally dismissed by the trial Court. It is argued with vehemence that as the petitioners are in possession of land on the basis of sale deeds duly registered in their favour by M/s. Suncity Town Planners Private

Limited and M/s. Dignified Home Living Private Limited, detailed in Paras 4 and 7 of the petition and the petitioners are in possession of the land on the basis of sale deeds, they are required to be impleaded as a party to protect their rights in the suit property more particularly in the circumstances that they have already challenged *ex parte* judgment and decree dated 22.11.2005 passed in Civil Suit No.4 of 04.01.1999 whereby sale deeds in their favour have been annulled and the matter is pending adjudication before the trial Court. In support of his contentions, he has referred to judgments of Hon'ble the Supreme Court of India "**Smt. Saila Bala Dassi vs Smt. Nirmala Sundari Dassi and another**", 1958 AIR (SC) 394, "**Raj Kumar vs Sardari Lal and others**", 2004(1) SCR 838, "**Mumbai International Airport Private Limited vs Regency Convention Centre and Hotels Private Limited and others**", 2010(4) RCR (Civil) 551. Further reference has been made to judgment of Kerala High Court "**C.P. Mujeeb vs Royal Hospital Private Limited and another**", 2008(4) RCR (Civil) 61 and judgment of this Court "**Gram Panchayat Garhi vs Dharambir**", 1998(2) RCR (Civil) 98.

I have heard counsel for the petitioners, perused the paperbook and the records particularly the order impugned.

The learned trial Court, on a detailed consideration of rival contentions of the parties and by advertng to the provisions of Order 1 Rule 10(2) CPC has recorded its observations in para 6 of the order holding that in backdrop of statutory provisions under Order 1 Rule 10 CPC, it cannot be articulated that impleadment of the applicants is

necessary in order to enable this Court to effectually and completely adjudicate the present suit. The impleadment of the applicants will not have any cascading effect on the fate of the present suit because the doctrine of *lis pendens ipso facto* makes the applicants bound by determination of the present suit. Further held that the authorities relied upon by counsel for the applicants do not apply to facts of the present case as the application under Order 1 Rule 10 CPC is filed at a belated stage when the case is fixed for final arguments and that too when evidence in rebuttal was closed by the Court order on 28.01.2003.

Reverting to the case at hand, suit for possession by Pawan Kumar and others was admittedly filed in November, 2006. The petitioners claim to have purchased some land during pendency of the earlier suit instituted in the year 1999 that culminated in the judgment and decree dated 22.11.2005. The petitioners being transferee *pendente lite*, in the earlier suit, have already taken recourse to appropriate proceedings for setting-aside the *ex parte* judgment and decree dated 22.11.2005 and the same shall be decided by the Court in due course of time, in accordance with law.

As the present suit for possession was filed in November, 2006, the petitioners cannot claim themselves to be transferee *pendente lite* or seek their impleadment by relying upon the judgments which deal with right of a transferee *pendente lite* to be impleaded as a party either under Order 1 Rule 10 or 22 Rule 10 CPC more particularly in the cases seeking specific performance of an agreement to sell. In this view of the matter, the petitioners cannot derive any advantage to their

contentions from the judgments in *Mumbai International Airport Private Limited's case (supra)*, *Raj Kumar's case (supra)* and *Smt. Saila Bala Dassi's case (supra)*.

In *C.P. Mujeeb's case (supra)* decided by the Kerala High Court, suit was filed for specific performance of contract and also for possession and the petitioner filed an application under Order 1 Rule 10 for impleadment contending that she is a shareholder and a Director of the first defendant company and there was no resolution passed by the company authorizing second respondent to execute an agreement for sale and the agreement, if any, is not binding on the company or the assets of the company and there is collusion of plaintiffs with defendants. Plaintiffs did not file any objection to that petition. However, respondents – defendants filed a counter statement contending that though company was wound up, second respondent was authorized by a resolution to execute an agreement for sale and petitioner is not a necessary party to the suit. The Court, in the concluding para, has held that when the agreement for sale was alleged to be executed by the second defendant for the first defendant company and the fact that petitioner is a shareholder of the company was not disputed and plaintiffs did not oppose the application for impleading, learned Sub Judge should not have dismissed the application seeking impleadment of petitioners herein as additional defendants. The Kerala High Court allowed impleadment of the petitioner in peculiar facts and circumstances of the case wherein even the plaintiffs (*dominus litus*) did not raise any issue with regard to impleadment of an additional defendant.

Counsel for the petitioners has failed to say anything meaningful as to how the judgment passed by the Kerala High Court has any bearing on the present case where the application filed by the petitioners has been hotly contested by the respondents/plaintiffs. The judgment in ***Gram Panchayat Garhi's case (supra)*** was also decided in its peculiar facts and circumstances and has got no bearing on the facts of the case at hand.

Hon'ble the Supreme Court of India in ***Mumbai International Airport Priviate Limited's case (supra)*** has held that plaintiff, being *dominus litus*, may choose persons against whom he wishes to litigate. Person, who is not a party has no right to be impleaded against wishes of the plaintiff. Further held that Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who though not a necessary party is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon matters in dispute in the suit. Though, he need not be a person in favour of or against whom the decree is to be made.

In the present case, the respondents/plaintiffs have not claimed any relief against the petitioners. Indisputably, they are not transferee *pendente lite* to claim that they would be bound by a decree, if any, passed against the persons arrayed as defendants. On the other hand, if a decree is passed against the persons arrayed as defendants and the petitioners would be sought to be dispossessed from the decretal land in execution of the decree, the petitioners would be

entitled to seek remedy under law. In this view of the matter, I do not find merit in contention of the petitioners that they are proper much less necessary parties to the suit. This apart, the suit has already reached at its fag end and is mature for arguments. As per settled position in law, impleadment of a party under order 1 Rule 10 CPC is the discretionary power of the Court. When the facts and circumstances of the present case are examined in the light of jurisdiction of the Court being discretionary, I do not find any reason to interfere in the impugned order particularly in the circumstances that the application has been filed at the fag end of the trial.

For the reasons aforesated, finding no merit, the petition fails and is accordingly dismissed *in limine*.

21.11.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No