

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7119 of 2014 (O&M)
Date of decision : April 26, 2016

Sushil Kumar Goenka and another

..... Petitioners

Versus

Dharam Pal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.J. R. Mittal, Senior Advocate with
Mr. Kashmir Singh, Advocate
for the petitioners.

Mr. Chirag Kundu, Advocate
for respondent No.1.

Mr. Ashok Tyagi, Advocate
for respondent No.2.

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

Amit Rawal, J (oral).

The petitioners-applicants whose application under Order 22 Rule 10 read with Rule 11 CPC for seeking impleadment in the pending appeal on account of property having purchased during the pendency of the suit has been dismissed by the lower appellate court.

Mr. J. R. Mittal, learned Senior counsel assisted by Mr. Kashmir Singh submits that judgment and decree dated 17.10.2013 vide which the suit of the respondents-plaintiffs was dismissed thereafter the defendant had sold the property vide

registered sale deed dated 21.10.2013 and the appeal has been filed on 26.10.2013, thus, defendants-respondents in the appeal had lost the right, title and interest. In support of his contentions he has relied upon the judgment rendered by Hon'ble Supreme Court in **Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Limited and others (2013) 5 SCC 397.**

Mr. R. S. Kundu, learned counsel appearing on behalf of the respondent No.1 submits that the provisions of Section 52 of the Transfer of Property Act, 1882 leaves no manner of doubt that no property can be sold during the pendency of the suit, any sale or alienation would be hit by the doctrine of lis pendence, therefore rightly so the application has been dismissed by the lower appellate court.

Mr. Ashok Tyagi, learned counsel appearing on behalf of respondent No.2 submits that he does not have any objection, in case, the application filed by the petitioner is allowed and also relies upon the judgment rendered by Hon'ble Supreme Court in **Dev Raj Vs. Harbans Singh 1996 (1) Apex Court Journal 590 (SC)** to submit that the aforementioned sale had become voidable.

I have heard learned counsel for the parties and appraised the paper book and of the view that the principles culled out by Hon'ble Supreme Court in **Thomson Press (India) Ltd.'s case (supra)** squarely applies to the facts and circumstances of the case. For the sake of brevity the principles culled out reads thus:-

“1. The Court can, at any stage of the proceedings, either

on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment. ”

Since the petitioners have acquired the right, title and interest in the property in dispute on account of having purchased the property in dispute vide registered sale deed dated 21.10.2013 after dismissal of the suit on 17.10.2013, I am of the view that petitioners are proper and necessary parties to be impleaded, as

the original defendant is not left with any right and interest in the property by virtue of aforementioned sale deed. There is no dispute to the ratio decidendi culled out in **Dev Raj's case (supra)** but the fact remains that there was a rider with regard to the sale as the property was hypothecated, however, the facts and circumstances as noticed above, of the present case are totally alien and different.

In view of the aforementioned observations, the impugned order under challenge declining the application under Order 22 Rule 10 and 11 CPC is hereby set aside and the application is allowed.

The petitioners are allowed to appear before the lower appellate court on 10.5.2016 and are permitted to represent their case and argue the pending appeal.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

April 26, 2016
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