

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7338 of 2013
Date of Decision: 5.1.2016**

Jai Parkash

---Petitioner

versus

M/s Active Promoters Private Limited and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Shailendra Jain, Senior Advocate
with Mr. Gaurav Aggarwal, Advocate
for the petitioner

Mr. Ashish Chopra, Advocate
and Mr. Prateek Sodhi, Advocate
for respondent No. 1

Mr. Kamal Mor, Advocate
for respondent No. 2

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

Rekha Mittal, J.

The present petition filed under Article 227 of the Constitution of India lays challenge to the order dated 15.11.2013 passed by the Additional Civil Judge (Senior Division), Gurgaon whereby the application filed by the petitioner for impleading as a party in the suit for specific performance filed by respondent No. 1 (plaintiff therein) was dismissed.

Counsel for the petitioner has submitted that respondents No. 2

and 3 allegedly entered into an agreement to sell dated 13.12.2005 in respect of land measuring 42 kanals 01 marla situated in the revenue estate of village Dhankot, Tehsil and District Gurgaon. Respondent No. 1 filed a suit for specific performance of the said contract of sale on 14.6.2006. Respondents No. 2 and 3 filed the written statement and raised a plea that they have already sold the suit land vide sale deed bearing Wasika no. 6787 dated 23.6.2006 to Smt. Shanti Devi (Respondent No. 4 herein). Respondent No. 1 filed an application for impleading Smt. Shanti Devi as one of the respondents being purchaser of the suit land pendente lite and the application was allowed by the trial court. It is further argued that Smt. Shanti Devi respondent No. 4 sold the suit land to the petitioner vide sale deed No. 1610 dated 13.4.2007 for a sale consideration of ₹3,75,93,750/- and Mutation No. 4367 was sanctioned in respect of the said sale. The petitioner was not aware of the litigation pending between the respondents at the time of purchase of the land and came to know about the same in third week of December 2012. He filed an application under Order 22 Rule 10 and Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (for short "CPC") for impleading/substituting himself as a party on the array of respondents but his prayer has been wrongly rejected by the trial court vide the impugned order. It is vehemently argued that the petitioner being the subsequent purchaser is entitled to be impleaded as a party in order to enable him to protect his interest in the suit property. In support of his contention he has relied upon judgment of Hon'ble the Supreme Court of India **Thomson Press (India) Limited vs. Nanak Builders & Investors Private Limited and others 2013(2) R.C.R.(Civil) 875** He has also relied

upon the latest judgment of this Court in **Civil Revision No. 6218 of 2013** titled **“Vivek Malhotra vs. Babu Lal Sharma and others”** decided on 21.9.2015.

Counsel for respondent No. 1 has supported the order passed by the trial court with the submissions that as the petitioner has allegedly purchased the suit property during pendency of the suit, he is bound by the decision of the trial court. He cannot have better rights or raise any defence different from what is available to his vendor. It is further argued that as vendor of the petitioner namely Smt. Shanti Devi did not contest the proceedings and has been proceeded against ex parte on the basis of publication of notice in a newspaper, the petitioner would not be entitled to either re-open the case or raise any defence.

I have heard counsel for the parties and perused the records.

Be that as it may, the question whether a purchaser of the property pendente lite has the right to be impleaded as a party in the pending litigation is no longer res integra in view of enunciation of law laid down by the Hon'ble Supreme Court of India in **Thomson Press (India) Limited's case (Supra)**. The Hon'ble Apex Court on a detailed consideration of the matter and after referring to series of judgments on the issue has arrived at a conclusion summed up in para 56 of the judgment in the following terms:-

(1)The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner.

(2)The transfer in favour of the appellant pendente lite is

effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

(3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

(4) The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.”

Keeping in view ratio of the judgment in **Thomson Press (India) Limited's case (Supra)**, the order passed by the trial court rejecting claim of the petitioner to be impleaded as a party by invoking the provisions of Order 22 Rule 10 CPC cannot be allowed to sustain. As a result, the petition is allowed. The petitioner is allowed to be impleaded as respondent No. 5 but subject to the condition that the petitioner as a result of his addition shall be entitled to raise and pursue only such defences as were available and taken by the original defendants and none other.

In view of what has been discussed hereinabove, the petition is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

5.1.2016
PARAMJIT