

Civil Revision No.2361 of 2017 (O&M)

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

Sr. No.109

**Civil Revision No.2361 of 2017 (O&M)
DECIDED ON: April 21, 2017**

BANT KAUR

..PETITIONER

VERSUS

RAMESHWAR DUTT AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Aman Pal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.7404-CII of 2017

Application is allowed as prayed for.

CR No.2361 of 2017

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of the order dated February 17, 2017 (Annexure P-5) passed by the learned Additional District Judge, Mansa, whereby an application moved by the petitioner under Order 1 Rule 10 CPC during the pendency of the appeal has been dismissed.

2. Briefly stated the facts giving rise in the instant case are that

Civil Revision No.2361 of 2017 (O&M)

plaintiff/respondent No.1 filed a civil suit against Gurmail Singh and Ballam Singh for specific performance of agreement dated July 28, 2006 pertaining to land measuring 29K 5M situated in revenue estate Gandu Khurd. During the pendency of said suit, plaintiff/respondent No.1 sold his land measuring 14K 12M to applicant/petitioner-Bant Kaur wife of Bachitter Singh r/o Raipur District Mansa vide sale deed dated January 11, 2010. It has been claimed that there was no remarks in the revenue record regarding the pendency of any proceedings as well as stay order etc. nor there was any such note/remark in the record of the registration Clerk at the time of execution and registration of the sale deed. Thus, Bant Kaur was not aware about any civil litigation pending between Rameshwar Dutt and Ballam Singh as well as passing of any stay order by the courts. Bant Kaur came to know about the civil litigation pending between the parties to the petition when the summons were received by her in a complaint case under Section 420, 467, 468, 471, 120-B IPC issued by the Judicial Magistrate Ist Class, Budhlada. On the basis of summoning order dated September 24, 2014, it was only thereafter, an application under order 1 Rule 10 CPC was moved which has been dismissed vide impugned order dated February 17, 2017.

3. Challenging the impugned order dated February 17, 2017 passed by Additional District Judge, Mansa, it has been vehemently argued by learned counsel for the petitioner that the suit for specific performance of agreement to sell dated July 28, 2006 was decreed vide judgment and decree dated December 09, 2013. Against which an appeal preferred by Gurmail Singh and Ballam Singh is pending in the court of Additional District

Judge, Mansa. On coming to know about the pendency of lis between Gurmail Singh and Ballam Singh on one side and Rameshwar Dutt on the other side, she moved an application under Order 1 Rule 10 CPC. Since, the petitioner is a bona fide purchaser for valuable consideration and without notice of the pendency of litigation between the seller and the proposed purchaser on the basis of agreement dated July 28, 2006, she is not only a proper but a necessary party. To safeguard and defend her interest as well as right in the disputed property which has accrued to her on the basis of sale deed dated January 11, 2010 in respect of land measuring 14K 12M, she is a necessary party and in her absence, matter in controversy cannot be adjudicated upon effectively and judiciously. The learned trial court has ignored the settled proposition of law while dismissing an application under Order 1 Rule 10 CPC simply on the ground that the doctrine of lis pendens would be applicable and she is not a necessary party. Since the impugned order suffers from material irregularity or illegality, it is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of the instant petition.

3. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner and has scrutinized the impugned order dated January 17, 2017 but does not find any legal and factual substance.

4. It is well settled proposition of law that a transferee of a property during the pendency of the proceedings is not a necessary party and such a purchaser cannot be impleaded as a party in the suit as he/she shall be bound by the judgment passed in the lis already pending. To fortify

Civil Revision No.2361 of 2017 (O&M)

the aforesaid observation, we can have the reference of the pronouncement of the Hon'ble Apex Court captioned as “*Sunil Gupta vs. Kiran Girhotra & ors. 2007 (4) Civil Court Cases 813 (S.C.)* as well as that of this court titled as “*Chandan Singh vs. Parsa & Ors. 1996 (1) Civil Court Cases 425*”. Otherwise also, if an application under Order 1 Rule 10 CPC is allowed during the pendency of the appeal, it would result into de novo trial, which is not permissible under law. Having purchased the property during the pendency of the suit, petitioner has purchased a litigation and for that reason, plaintiff in whose favour the suit for specific performance has already been decreed cannot be made to suffer.

5. In the light of what has been discussed above, this Court does not find any merit in the instant petition. Accordingly, it stands dismissed.

6. No order as to costs.

April 21, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No