

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

**C.R. No. 6637-2016
Date of decision : 22.08.2017**

Lakshminder Kaur ...Petitioner

versus

Gurinder Singh and another ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.S. Seemar, Advocate
for the petitioner.

Mr. Bikramjit Aurora, Advocate
for respondent No. 1

RITU BAHRI, J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 16.09.2016 (Annexure P-9) passed by the learned Addl. Civil Judge (Sr. Divn.) Tarn Taran whereby application of the petitioner under Order 1 Rule 10 CPC r/w Section 151 CPC has been rejected.

Brief facts of the case are that petitioner purchased the property measuring 24 kanals 12 marlas of land out of total land of 493 kanal 11 marlas 1/20th share falling in Khata Khatauni No. 223/545/578 as per jamabandi 2010-2011 in village Chhabal Tehsil Tarn Taran district Amritsar, at the rate of Rs.11 lacs per acre, vide agreement to sell dated 23.02.2015 (Annexure P-1) from respondent No. 2 and in lieu of that sale deed was executed on 15.06.2015 (Annexure P-2) for a total consideration of Rs.33,83,000/-. The petitioner had purchased the said property to

originate a school for uplifting the education standard in villages. Respondent No. 1 in order to grab the above said property forged an agreement to sell dated 15.02.2010 with respondent No. 2 and the date of execution of the sale deed was alleged to be dated 28.11.2010. But this date of agreement to sell or execution of the sale deed was never extended nor was any suit for specific performance was filed by respondent No. 1. It was only after registration of F.I.R No. 104 dated 29.06.2012, petitioner filed a suit for specific performance on the basis of agreement to sell dated 15.02.2010. Respondent No. 1 is cousin brother of respondent No. 2 and in order to save himself from the illegal act of cheating and forgery in the above said F.I.R, respondent No. 1 filed suit (Annexure P-4) for possession by way of specific performance in respect of agreement to sell dated 15.02.2010 executed between respondent No. 1 and respondent No. 2 in respect of land measuring 24 kanals 12 marlas situated in the area of village Jhabal Kalan Tehsil and District Tarn Taran or in the alternative suit for recovery of Rs.10 lacs. In this suit, respondent No. 2 filed written statement stating therein that the suit land was earlier ownership of mother Balbir Kaur and her maternal Aunt Niranjan Kaur, who were real sisters of Darshan Singh father of the petitioner-Gurinder Singh. The said Balbir Kaur died on 28.05.2005 (P-29) and Niranjan Kaur died on 10.12.1991(P-29) at Mumbai. The plaintiff with the connivance and conspiracy with his accomplice Varinder Singh Narbardar Gian Singh and Deed Writer Prashotam Lal created a registered sale deed by impersonation in respect of the suit land in favour of Varinder Singh. The said registered sale deed

dated 04.12.2006 allegedly to be executed by Balbir Kaur and Niranjana Kaur in favour of Varinder Singh was a result of impersonation as said sale deed was executed after the death of both sisters.

When the petitioner came to know about the said suit filed by respondent No. 1 against respondent No. 2, she moved an application under Order 1 Rule 10 CPC for being impleaded as a necessary party and this application was dismissed on the ground that the subsequent buyer need not to be impleaded as a party in a suit for specific performance, vide order dated 16.09.2016 (Annexure P-9).

Learned counsel for the petitioner contends that once respondent No. 2 has connived with his cousin brother i.e respondent No. 1, thereafter, petitioner is required to be impleaded as a necessary party for proper adjudication of the case. The petitioner is a bona fide purchaser of the suit land and is having every right to be heard in respect of the suit land.

On the other hand, learned counsel for respondent No. 1 has referred to the judgments of Hon'ble the Supreme Court of India in a case of ***Bharat Karsondas Thakkar vs. M/s Kiran Construction Co. and others, 2008(3) RCR (Civil) 57 and Kasturi v. Iyyamperumal, 2005(2) RCR (Civil) 691*** to contend that the application of the petitioner has rightly been dismissed as in a suit for specific performance, a third party or stranger could not be added so as to convert a suit of one character into a suit of different character. Any attempt to implead a third party to the contract in the suit would be hit by the provisions of Section 15(a) of the Specific Relief Act.

Learned counsel for the petitioner has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***Thomson Press (India) Ltd vs. Nanak Builders and Investors P. Ltd and others, 2013(2) R.C.R (Civil) 875*** wherein Hon'ble the Supreme Court while considering a case of a party who had purchased property despite the injunction order passed by the learned trial Court. Thereafter, his application to be added as party-defendant was dismissed by the High Court on the ground that he was not a bona fide purchaser and purchased property in violation of injunction issued by the Copur. However, Hon'ble Supreme Court set aside the order of the High Court and held that the High Court has not gone into question as to whether if a person who purchases the suit property in violation of the order of injunction and having sufficient notice and knowledge of the agreement, need to be added as party for passing an effective decree in the suit. In para 22 and 24, it has been observed as under:-

22. In the case of Vidhur Impex (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:

“Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern

disposal of an application for impleadment are:

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.”

24. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of

justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. Discussing the principles of lis pendens, the Privy Council in the case of Gouri Dutt Maharaj v. Sukur Mohammed & Ors. AIR (35) 1948, observed as under:

“The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered.”

Thus, the principle laid down in the above said judgment can be applied in the facts of the present case, as the petitioner had purchased the property from respondent No. 2, vide agreement to sell dated 23.02.2015 and sale deed was executed on 15.06.2015 for a total sale consideration of Rs.33,83,000/-. She even enquired from the concerned Revenue Authorities and Revenue records with regard to the above said property and the property was found to be free from any kind of dispute and encumbrance. Further F.I.R has also been registered by respondent No. 2 against respondent No. 1 with the allegations that respondent No. 1 in connivance with Revenue Officers had produced impersonated ladies in place of dead person and had got one sale deed dated 04.12.2006 registered vide Wasika No. 1706, Jild

No. 727, Page No. 55 whereas the said vendor Balbir Kaur (mother of respondent No. 2 already died on 28.02.2005). Thus, respondent No. 1 in order to save himself from the illegal act of cheating and forgery in the above said suit, filed suit on 14.02.2013 (Annexure P-4) i.e after 03 years of the date of agreement to sell dated 15.02.2010.

Thus, keeping in view the above factual position, the petitioner should have been impleaded as party in the suit, as he had also purchased the land from respondent No. 2 for a total sale consideration of Rs.33,83,000/-, which is not being disputed.

Applying the ratio of *Thomson's case (supra)*, the petitioner is to be added as party in the suit (Annexure P-4). The revision petition is accordingly allowed and order dated 16.09.2016 (Annexure P-9) passed by the learned Addl. Civil Judge (Sr. Divn.) Tarn Taran is hereby set aside.

22.08.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No