

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 283

SAO No.29 of 2015 (O & M)
Date of Decision: April 20, 2017

The SMDR Sanatan Dharam College, Pathankot

..... APPELLANT

VERSUS

Ashok Plato & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Vipin Mahajan, Advocate, for the appellant.

None for respondent Nos.11 and 16.

Mr. Harsh Bungar, Advocate, for respondent No.12.

Mr. Sanjiv Patyal, Advocate, for respondent Nos.17 to 19.

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Jaspal Singh, J

1. Challenge in this appeal is to judgment dated February 02, 2015 passed by the lower appellate court whereby after setting aside judgment & decree dated December 22, 2009 passed in case titled 'The SMDR Sanatan Dharam College, Pathankot vs. Ashok Plato & others', the case has been remanded back to the trial court while allowing an application moved under Order 1 Rule 10 CPC read with Section 151 CPC for impleading the subsequent purchasers as party.

2. The facts giving rise to the instant appeal are that appellant –

‘College’) filed a suit for declaration to the effect that plaintiff is owner in possession of the land fully detailed and described in head note of the plaint and sale deed dated December 21, 1995 executed by defendant Nos.1 to 9 on behalf of defendant No.10 in favour of defendant Nos.11 to 15 is illegal, null and void, with a consequential relief of permanent injunction. The case set up by the appellant – plaintiff before the trial court was that the College is a registered society. One Chaudhary Malla Singh, a big landlord, extended his help in opening the educational institutions in Punjab and Himachal Pradesh during his life time. In order to further advance the noble cause of education, Chaudhary Dhian Singh son of Malla Singh donated 70 acres of land vide registered gift deed dated May 28, 1959 in favour of appellant – plaintiff consisting of the suit land. The possession of suit land was delivered to the appellant – plaintiff. An entry was also incorporated and sanctioned in this regard in the revenue record showing the Sanatan Dharam College Security Trust, Pathankot as owner in possession of the suit land. It has further been alleged that defendant Nos.1 to 9, in order to grab the property of Trust, floated their fake Trust of similar name and fabricated Trust deed dated June 13, 1995 in the name of Sanatan Dharam College Security Trust, Pathankot, and succeeded in procuring the registration from the Registrar of Societies. Even, they also succeeded in alienating the suit land to defendant Nos.11 to 15 vide sale deeds dated December 21, 1995 and December 22, 1995 and also got the mutation sanctioned. Defendant Nos.11 to 15 were fully aware that their vendors have no right to sell the property but they also joined hands and conspired, and succeeded in getting the sale deeds executed in their favour.

3. The suit was hotly resisted by all the defendants. Issues out of pleadings were also framed. Parties led their evidence in order to establish their respective claims.

4. After thorough analysis of the matter, material on record and the law applicable to the facts & circumstances of the case, the trial court arrived at a positive finding that the revenue record depicts the ownership of College and the defendants have failed to lead any oral or documentary evidence in their favour. It was also specifically held by the trial court that the College/Trust alleged to have been created by defendant Nos.1 to 9 is not a genuine one. Accordingly, the trial court concluded that the appellant – plaintiff is owner in possession of the suit land. It was also specifically held by the trial court that defendant Nos.11 to 15 are not bona fide purchasers. Consequently, suit filed by the appellant – plaintiff was decreed in toto by the trial court vide its judgment & decree dated December 22, 2009.

5. Aggrieved by the aforesaid judgment & decree dated December 22, 2009 passed by the trial court, defendant Nos.11, 12, 14 and 15 preferred an appeal before the first appellate court on January 27, 2010. During the pendency of the said appeal, two applications were filed by the subsequent purchasers under Order XXII Rule 10 CPC and under Order 1 Rule 10 CPC for their impleadment as party in appeal. One such application under Order 1 Rule 10 CPC was moved by Sunit Kumar son of Balwant Rai, resident of Village Bharoli Kalan, Tehsil & District Pathankot unfolding that he has purchased some portion of suit land from Swaran Dass son of Sant Ram (defendant No.11 in the main suit) and he claimed himself to be a bona fide purchaser. Another application under Order XXII Rule 10 CPC was moved by Tara Devi, Rajni and Kamlesh Rani for their impleadment as

relied upon a sale certificate dated July 22, 2009. Both these applications were resisted by the plaintiffs. However, the first appellate court allowed both these applications vide impugned order dated February 02, 2015 but at the same time, judgment & decree dated December 22, 2009 passed by the trial court was also set aside and the case was remanded back to the trial court to proceed further as per law and decide the same after affording opportunity to defend their case.

6. The contention of learned counsel for the appellant while challenging impugned order dated February 02, 2015 is that the first appellate court has set aside the well-reasoned and sound judgment passed by the trial court in complete disregard to the undisputed fact, material and evidence on record and above all the position of law settled with regard to the subject matter of instant lis. No such prayer for remand was even made in either of the applications moved under Order XXII Rule 10 CPC and under Order 1 Rule 10 CPC.

7. Learned counsel for the appellant further contends that impugned order dated February 02, 2015 is in a complete violation of the letter & spirit of the provisions contained in order XLI Rules 23 & 25 CPC which deal with a situation when the appellate court can remand the case back to the trial court for fresh decision.

8. While referring to the provisions contained in Order XLI Rules 23 & 25 CPC as well as judgment in Hawa Singh vs. Lal Singh, 1998(4) RCR (Civil) 165, it has been submitted by learned counsel for the appellant that remand is not a matter of course unless the appellate court reaches a conclusion that findings on the issues are not sustainable and the matter requires re-trial. Thus, in a situation where the appellate court has

parties were not allowed to implead as party in suit is itself no ground to remand the case for re-trial.

9. While placing reliance upon another judgment delivered in Rajinder Singh vs. Mehar Singh, 1990(2) PLR 158, learned counsel for the appellant contends that remand of the case is only permissible when the case is filed in any of the eventualities described in Order XLI Rule 23 or 23-A CPC. Even where the amendment is allowed in the written statement and additional issues are framed arising on the basis of amendment in the written statement, remand cannot be ordered as a matter of course, that too, by setting aside the well-reasoned judgment with a single stroke of pen. In case the appellate court was of the view that some additional evidence is required on the issues to advance justice to the parties, a report could have been called from the trial judge. Similarly, while relying on the observations made in judgment of the Apex Court in Bachan Devi vs. Nagar Nigam, Gorakhpur, 2008 (2) RCR (Civil) 367, it has been submitted that order of remand should not be passed as a matter of routine and the first appellate court has the power to analysis the factual position and can decide the issues as well as additional issues. Thus, the gist of all the aforesaid decisions is that remand of the case without reversing the findings is not legally justified, that too, by setting aside the judgment & decree.

10. While concluding his arguments, it has been submitted by learned counsel for the appellant that in the given circumstances, impugned order/judgment is not sustainable in the eyes of law and is liable to be set aside and the matter be remitted with direction to lower appellate court to decide the appeal on merits in accordance with law.

11. Per contra, learned counsel for the contesting respondents

appellate court submitting that the same is absolutely in consonance with the settled canons of law. The contesting respondents – applicants have substantial interest in the property as they have purchased a part of it. They are bona fide purchasers for valuable consideration and without notice of any adverse title. Infact, Sunit Kumar son of Balwant Rai, resident of Village Bharoli Kalan, has purchased some portion of the land vide registered sale deed from Swaran Dass son of Sant Ram (defendant No.11 in the main suit) whereas other respondents – applicants Tara Devi, Rajni and Kamlesh Rani have purchased the suit property by way of an auction, regarding which, sale certificate dated July 22, 2009 has already been issued in their favour. Not only this, mutation of the property which is subject matter of the sale deed as well as that of sale certificate, has already been sanctioned and incorporated in the revenue record.

12. Learned counsel for the respondents – applicants have further contended that mere fact that some part of the property in suit has been purchased by the applicants who have been allowed to be made party vide impugned order dated February 2, 2015, during the pendency of suit and doctrine of lis pendens would be applicable, they cannot be estopped or debarred from contesting the suit to protect their rights. While relying upon the pronouncement of the Apex Court in Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. And others, 2013(2) RCR (Civil) 875; 2013 AIR (SC) 2389, it has been contended by the learned counsel for the respondents that the Hon'ble Supreme Court, after discussing the provisions contained in Order 1 Rule 10 CPC and Order XXII Rule 10 CPC, has made a distinction between a necessary party and a proper party. As observed in the aforesaid judgment, a necessary party is the person who ought to be

be passed by the court whereas 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 passed. Moreover, Order 1 Rule 10 CPC empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issues involved in the suit. It gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit. Even the purchase of property during pendency of lis and operation of doctrine of lis pendens would not make the transfer or sale void and it may remain valid as between the parties subject to directions which the competent court may issue in the suit against the vendor(s).

13. Learned counsel for the respondents – applicants has further contended that the appellant is only aggrieved against the remand of case after setting aside judgment & decree dated December 22, 2009 passed by the trial court. He is not averse to the impleadment of respondents – applicants as party to the suit but until and unless the judgment & decree is set aside, the respondents – applicants who have been allowed to be made as party to the suit, will not be able to put up their case effectively and would be debarred from adducing their evidence to establish their bona fides. In such a situation, the judgments relied upon by learned counsel for the appellant, being distinguishable, are inapplicable. Thus, the instant appeal being devoid of merits is liable to be set aside.

14. After bestowing due consideration to the rival submissions

judgment/order, this Court is of the considered view that there is no infirmity, illegality or impropriety with regard to remand of the case after impleadment of the contesting respondents – applicants.

15. Concededly, the contesting respondents – applicants are subsequent purchasers and they have purchased some part of the suit property during pendency of the lis. When subsequent purchasers came to know about the pendency of lis before the lower appellate court, they moved applications under Order I Rule 10 CPC read with Section 151 CPC as well as well as under Order XXII Rule 10 CPC for their impleadment as party to the suit which have been allowed vide the impugned judgment. No doubt, the purchasers/transferee pendente lite can be added as property party if his interest in a subject matter of the suit is substantial and not just peripheral. A transferee pendente lite is interested in litigation to the extent it acquires interest from the party to the suit and after transfer, the transferor may lose interest in the property and even there may be some collusion at any subsequent point of time, and in such a situation, the plaintiff is under no obligation to make such a person/transferee as a party, however, under Order XXII Rule 10 CPC, an alienee pendente lite may be joined as a party.

16. After considering the provisions contained in Order I Rule 10 CPC which gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit, the Hon'ble Apex Court in case of Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors., 1992 (2) SCC 524 held as under:

“It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But

that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant whose only object is to prosecute his own cause of action. Similar provision was considered in ***Amon v. Raphael Tuck & Sons Ltd., (1956) 1 All E.R. 273***, wherein after quoting the observations of Wynn-Parry, J. in ***Dollfus Miegiet Compagnie S.A. v. Bank of England, (1950) 2 All E.R. 611***, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'

17. To the similar effect is the decision of this Court in Amit

that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff, in which, case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. This Court observed:

“16. The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the Defendant is vitally interested in the litigation, where the transfer is of the entire interest of the Defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the Plaintiff. Hence, though the Plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case”

18. As far as the contention of learned counsel for the appellant that judgment & decree dated December 22, 2009 passed by the trial court has been set aside by the lower appellate court with a single stroke of pen, that too, without any cogent reasoning, is concerned, that is not against the

principle of natural justice. Once the court has come to a conclusion that impleadment of the subsequent purchasers is necessary, they being the proper and necessary parties for the proper, effective and judicious adjudication of the matter in controversy and further that they have got a substantial right which is likely to be affected, the setting aside of the judgment was necessary because they are required to be given an ample opportunity to put up their case before the trial court by way of filing written statement and it was only thereafter to proceed with the matter.

19. As has also been observed earlier that the sale deed or any other document remains valid though subject to directions issued by the competent court against vendor(s) if it is effected during the pendency of lis, such a sale does not itself become void. In this context, we can have the reference of pronouncement of this Court in Sunita Devi vs. Pawan Kumar & another, 2014(4) RCR (Civil) 705. Similarly in another case Gopal Singh vs. Raghbir Singh, 2010(4) RCR (Civil) 723, this Court has categorically observed that a purchaser of the suit property during the pendency of suit is certainly a necessary and proper party to the suit because his rights would be affected by adjudication of the suit. The defendant having sold the suit property to the subsequent purchaser, may or may not defend the suit at any subsequent stage and in such a situation, the defendant would be left in a lurch, that too, without any right or interest.

20. While relying upon the judgments, referred to above, in cases of Amit Kumar Shaw (supra) and Thomson Press (India) Ltd., the Allahabad High Court in Smt. Jamila Khatoon (since deceased) by LRs. Vs. Ram Niwas Gupta, 2015(3) ILR (Allahabad) 1281 has observed as under:-

“36. What emerge from the aforesaid decisions of the Supreme Court are: (i) a subsequent purchaser is a necessary and proper party; (ii) after sale, the owner can lose interest in litigation, thus it

can adversely affect the right of the subsequent purchaser; (iii) Section 52 of the Transfer of Property Act does not prohibit the bonafide transfer of the property, it only puts a rider that the subsequent purchaser shall abide the result of the suit; and, (iv) the Court has to be prima facie satisfied while exercising its discretion to allow the application, and the other aspects can be considered at the time of hearing.

37. In view of the above principles, I am of the view that the trial Court without considering the law on the subject has summarily rejected the application of the applicants for impleadment without due application of mind.

38. The finding of the trial Court that the subsequent transfer was hit by Section 52 of the Transfer of Property Act, is contrary to the law. Thus, the trial Court has misconstrued the scope of Section 52 of the Transfer of Property Act. The trial Court has also failed to notice that the Supreme Court has directed to decide the relevant issues after hearing both the parties and after permitting them to lead the evidence, therefore, the trial Court was not justified in passing the order to proceed with the suit *ex parte* on 02nd April, 2003. The application of the applicants for their impleadment and recall of the order dated 02nd April, 2003 was moved within five days i.e. 07th April, 2003.

39. The proper course for the trial Court was to recall the order dated 02nd April, 2003, to allow the impleadment of the applicants as party in the case, as in absence of both the plaintiff as well as the applicants the issues framed by the High Court could not have been effectively adjudicated upon, and thereafter to proceed to return the findings after hearing both the sides. From the plain reading of the issues framed by the High Court, on the direction of the Supreme Court, it is evident that the issues need proper determination of fact with regard to the delay in filing the suit. The said issues cannot be determined without proper evidence by both the sides.”

21. A glance at the aforesaid observations aforesaid observations transpires that the trial court was directed to decide the relevant issues after hearing both the parties and after permitting them to lead

evidence. Meaning thereby that when the subsequent purchasers have been held to be a necessary and proper parties, they are not to be impleaded simply as a party to the suit but they have every right to put up their case as well as to lead evidence in support of issues. In short, they cannot be condemned unheard simply after their impleadment as party to the suit.

22. In the light of what has been discussed above, this Court does not find any infirmity, illegality or impropriety in the impugned judgment passed by the lower appellate court, rather the same upheld. Accordingly, the instant appeal is dismissed.

April 20, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No

