

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

**Civil Revision No.1238 of 2018 (O&M)
Date of Decision:17.10.2018**

**Dr. Vinod Aggarwal and another
.....Petitioners**

Vs

**Varinder Kumar Kanojia and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Amit Aggarwal, Advocate
for the petitioners.

Mr. Ram Kumar Saini, Advocate
for respondent No.1.

Mr. Balkarn Singh Aulakh, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 16.01.2018 passed by the Addl. District Judge, Ambala whereby the application filed by the petitioners for impleading them as appellants in the pending appeal titled '*Brij Mohan Gupta vs. Varinder Kumar Kanojia*' against the judgment and decree dated 02.03.2017 passed by the Civil Judge (Jr. Divn.) Ambala was dismissed.

[2]. Petitioners claimed that they were occupants as tenants of suit property i.e. Shop No.258, Lal Khurti Bazar, Ambala Cantt, since 1973 and are still in possession as medical practitioners. Brij Mohan Gutpa/respondent No.2 was the landlord/previous owner, who used to collect rent from the petitioners on regular basis. On 29.04.2011, respondent No.2 sold the property to one Rajneesh Gupta vide registered Power of Attorney dated 29.04.2011 and also executed agreement to sell and Will dated 29.04.2011 in favour of Rajneesh Gutpa after accepting the full consideration from him. Respondent No.2 also gave affidavit to Rajneesh Gupta testifying that the power of attorney was irrevocable in nature. After purchasing the property, Rajneesh Gupta paid the property tax of the suit property from the year 2010 to 2016. In October 2011, Rajneesh Gupta contacted the petitioners and thereafter on the basis of some documents, the petitioners started paying rent to Rajneesh Gupta, who executed rent deed dated 14.10.2013 in favour of the petitioners. Petitioners paid the rent to Rajneesh Gutpa till the date of getting the ownership of the property on the basis of aforesaid documents. In February, 2016, Rajneesh Gupta contacted the petitioners and showed his desire to sell the property. Since the petitioners were already in possession of the property, therefore, Rajneetsh Gutpa made first offer to the

petitioners. Petitioners agreed to purchase the property on 02.06.2016. Rajneesh Gupta, sold the property to the petitioners by way of sale deed dated 02.06.2016. Petitioners got the mutation sanctioned in their names.

[3]. Petitioners further alleged that in July 2017, they came to know that the sale deed dated 02.06.2016 executed by Rajneesh Gupta in their favour has been set aside by the Civil Judge (Jr. Divn.) Ambala vide judgment and decree dated 02.03.2017 in a suit for specific performance filed by respondent No.1 against Brij Mohan Gupta respondent No.2. Respondent No.1 filed a suit for specific performance against respondent No.2 on the basis of agreement to sell dated 02.06.2009 executed by respondent No.2 in favour of respondent No.1 to sell property No.258 having defined dimensions. The suit was contested by respondent No.2 Brij Mohan Gupta and the same was decreed vide judgment and decree dated 02.03.2017. It was also observed that since defendant/respondent No.2 herein has already sold the property in question during pendency of the suit, therefore, doctrine of *lis pendens* would apply and the subsequent sale deed executed by respondent No.2 was declared to be null and void.

[4]. Against the aforesaid judgment and decree dated 02.03.2017, the first appeal is pending before the lower

Appellate Court at the instance of respondent No.2/Brij Mohan Gupta. In the said pending appeal, an application under Order 1 Rule 10 CPC was filed by the petitioners for impleading themselves as appellants along with Brij Mohan Gupta.

[5]. Perusal of the aforesaid facts would show that at the one hand a suit for specific performance has been decreed, wherein the sale deed executed by judgment-debtor/respondent No.2 during pendency of the appeal was declared to be null and void. Petitioners have derived their possessory interest in the property by virtue of general power of attorney executed by Brij Mohan Gupta in favour of Rajneesh Gupta, who in his turn transferred the property to the petitioners by virtue of further agreement.

[6]. The circumstances and the background in which sale deed dated 02.06.2016 was executed by Rajneesh Gupta in favour of petitioners has to be tested at the threshold of concept of *bona fide* purchasers or vendee *lis pendens*. Since the sale deed has been set aside vide judgment and decree dated 02.03.2017, therefore, in appeal filed by Brij Mohan Gupta, the assignees by sale are required to be appreciated in terms of Section 19(b) of the Specific Relief Act.

[7]. In view of **Thomson Press (India) Ltd. vs. Nanak**

Builders & Investors P. Ltd. and others, 2013(2) R.C.R.

(Civil) 875 in a case of specific performance, the subsequent vendee/vendee *lis pendens* has to be appreciated in terms of Section 19(b) of the Specific Relief Act. The judgment of the lower Appellate Court would be binding not only on the litigating party, but on those also, who derive their entitlement *pendente lite*. A person, who was put in possession on account of agreement to sell can set up a plea of transfer of property Act. The impleadment of the petitioners, at this stage in the pending appeal would not cause any material prejudice to the respondents. Even if an application was filed by the plaintiff during pendency of the suit for direction to the defendant to disclose name of subsequent transferee and the same was disclosed by the defendant, the same will not take away the right of the petitioners as they will remain as vendee *lis pendens* and such assignees by sale would be entitled to be impleaded as per ratio of the aforecited case.

[8]. Since the sale deed has come into being during pendency of the suit for specific performance, therefore, while applying the ratio of **Thomson Press (India) Ltd's** case (supra), I deem it appropriate to allow the petitioners to be impleaded as party appellants in the first appeal pending before the lower Appellate Court along with Brij Mohan Gupta. Consequently, the

order dated 16.01.2018 passed by the Addl. District Judge,
Ambala is set aside and the revision petition is allowed.

October 17, 2018	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No