

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2647 of 2016 (O/M)
Date of decision : 30.4.2018

Vedpal

..... Petitioner

Versus

Smt. Usha Devi and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rakesh Nehra, Advocate,
for petitioner.

Mr. B.R. Gupta, Advocate,
for respondents No. 3 and 4.

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

KULDIP SINGH J. (ORAL)

Impugned in present revision is judgment dated 10.3.2016, passed by learned Civil Judge (Junior Division), Bahadurgarh, vide which defendants No. 3 and 4, who are subsequent purchasers, were allowed to recall PW1 to PW3 and cross examine them.

The background of the case is that plaintiff Vedpal filed a civil suit for possession by way of specific performance of agreement or in alternative for recovery of Rs. 8,50,000/- alongwith interest and also for permanent injunction on 17.3.2007. In the said case, injunction was granted on 14.6.2007 restraining further alienation of land. However, despite the stay order, defendants No. 3 and 4 purchased suit land from defendants No. 1 and 2, vide sale deed dated 28.1.2009. In this case, evidence of plaintiff was continuing and was closed on 9.1.2012. Defendants also completed evidence on 7.5.2015. On an application filed by

CR No. 2647 of 2016 (O/M)

plaintiff dated 16.8.2012, defendants No. 3 and 4 were added as party on 8.12.2015 when defendants No. 1 and 2 have already completed their evidence. It further comes out that question of giving right to defendants No. 3 and 4 to file written statement came to this Court. This Court, vide order dated 8.12.2015, passed in CR No. 4990 of 2014 (Annexure-P-1), while allowing defendants No. 3 and 4 to file written statement subject to costs of Rs. 10,000/-, gave following directions :-

'11. Accordingly, both the parties are directed to appear before the trial Court on 8.1.2016 and upon their appearance the trial Court shall fix a date for filing written statement by the petitioners. Only one opportunity is required to be given to the petitioners for filing the written statement and in the event of filing the same, the trial Court shall be obligated to proceed with the case in accordance with law.'

Admittedly, in this case, written statement was filed and additional issue of purchase was framed. Defendants No. 3 and 4 claim right to cross examine defendants No. 1 and 2 when they were not party to suit. The said application has been allowed, vide impugned order.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The learned counsel for petitioner has argued that defendants No. 3 and 4 have stepped into the shoes of defendants No. 1 and 2. Despite the stay order, they had purchased the land and now, they cannot recall PWs already examined by plaintiff. It has been further argued that in this case, the stay order of the Court was violated and if it is allowed to happen, then one of the party will further sell the land during pendency of litigation and will again claim to recall PWs for cross examination.

CR No. 2647 of 2016 (O/M)

On the other hand, learned counsel for respondents No. 3 and 4 contends that they were not party to suit at the time when PWs were examined. They were made party on the application of plaintiff. Therefore, since they have been allowed to file written statement and issue has been framed, they have right to cross examine PWs already examined. The learned counsel for respondents No. 3 and 4 has also relied upon authority of Hon'ble Supreme Court in *Thomson Press (India) Ltd. Versus Nanak Builders and Investors P. Ltd. and others*, Vol. CLXXI-(2013-3) The Punjab Law Reporter 26 and authority of this Court in *Gopal Singh Versus Raghbir Singh and another*, Vol. CLXI The Punjab Law Reporter 145.

Perusal of said authorities shows that in these cases, subsequent purchasers were allowed to made party.

The law point arises in present case is as to whether subsequent purchaser, who purchases the disputed property during the pendency of suit despite the stay order and is made party after witnesses of plaintiff are already examined, is entitled to recall PWs for further cross examination ?

I am of the view that subsequent purchasers in such case have no such right. Defendants No. 3 and 4 are subsequent purchasers during the pendency of litigation and despite stay order. The original owners defendants No. 1 and 2 were contesting the suit. They cross examined the witnesses of plaintiff. Defendants No. 3 and 4 have stepped into their shoes and if such practice is allowed, then one of the party may again sell the land and new vendee will again file application for reopening of entire case by recalling PWs. Vide order dated 8.12.2015, passed by a coordinate bench of this Court, subsequent purchasers were allowed to file written statement. There was no specific direction that all the PWs be recalled and be cross

CR No. 2647 of 2016 (O/M)

examined by subsequent purchasers. Subsequent purchasers are otherwise hit by principle of lis pendens. In similar situation, this Court in RSA No. 4314 of 2008, titled as *Sukhdev Singh and others Versus Mohan Singh and others*, decided on 2.8.2011 (Annexure-P-2) took the view that subsequent purchasers are not allowed to recall PWs for cross examination.

I am of the view that since defendants No. 3 and 4 have stepped into shoes of defendants No. 1 and 2, who are originally defending the case, at the most they will acquire the rights of defendants No. 1 and 2 whatever they had in disputed property. Therefore, subsequent purchasers during pendency of suit, who purchase the disputed land despite stay order are not allowed to recall the PWs and cross examine them which were examined before they were made party, though, in view of fact that they were allowed to file written statement, they are allowed to lead the evidence to support their plea of bonafide purchaser. It being so, revision is allowed. Impugned order is set aside subject to condition that defendants No. 3 and 4 shall be permitted to lead evidence on their plea of bonafide purchaser.

(KULDIP SINGH)
JUDGE

30.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No