

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

**C.R. No.4293 of 2016 (O&M)
Date of Decision.04.12.2018**

Balbir Kaur

...Petitioner

Vs

Sanyogita Rani and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Bungar, Advocate
for the petitioner.

Mr. R.S. Longia, Advocate
for respondent No.3.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated 03.03.2016 (Annexure P-5) whereby the application submitted by the petitioner-plaintiff in suit for specific performance of agreement to sell for impleading Manjit Kaur wife of Kirpal Singh, subsequent vendee as defendant No.4 being necessary party, has been dismissed.

Mr. Harsh Bungar, learned counsel appearing on behalf of the petitioner submitted that respondent-defendant No.1 entered into agreement to sell dated 17.05.2007 in respect of house bearing No.1115, built on an area measuring 6 marlas. However, the aforementioned suit was filed on 04.12.2008, it transpired that respondents at the back of the plaintiff had already sold the property to Manjit Kaur vide sale deed dated 01.12.2008, which was during the existence of the agreement to sell but in the absence of the same, technical hitch or flaw may not come at final stage. In support of

aforementioned submission, relied upon ratio decidendi culled out in judgment rendered by Hon'ble Supreme Court in **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. and others 2013 (2) RCR (Civil) 875.**

Mr. Longia, learned counsel appearing on behalf of the respondent submitted that impleadment of defendant No.4 would, prima facie, be barred by limitation as the sale deed was executed before the filing of the suit, thus, the plaintiff did not exercise due diligence.

I have heard learned counsel for the parties, appraised the paper book and of the view that the argument of Mr. Longia is not sustainable, for, the issue with regard to impleadment of the subsequent vendee in respect of agreement to sell is no longer res integra in view of the ratio decidendi culled out in para 22 of the judgment in **Thomson Press (India) Ltd.'s case** (supra) and the same reads 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.”

Respondents will be at liberty to take all possible objections to press the issue, which will be subject to adjudication at final stage but impleadment cannot be denied at initial stage of the suit.

In view of the aforementioned observations, the impugned order is set aside and the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

December 04, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No