

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

**Civil Revision No.6370 of 2017**

**Date of Decision:24.09.2018**

**Maltan Singh**

**.....Petitioner**

**Vs**

**Smt. Kasturi Devi and others**

**....Respondents**

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

Present:Mr. Bhag Singh, Advocate  
for the petitioner.

Mr. Akshay Jindal, Advocate  
for respondent No.1.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has challenged the order dated 10.08.2017 passed by the Addl. Civil Judge (Sr. Divn.) Naraingarh, vide which application under Order 1 Rule 10 CPC was dismissed.

[2]. Brief facts can be noticed in order to appreciate the controversy.

[3]. Plaintiff/respondent No.1 filed a suit for declaration and permanent injunction challenging the sale deed dated 18.06.2009 executed by the plaintiff in favour of respondents No.2 and 3 i.e. defendants No.1 and 2 in respect of 8 *Kanals* of land. Further sale deed dated 23.07.2010 in respect of 8 *Kanals* of land executed by respondents No.2 and 3 i.e. defendants No.1 and 2 in favour of respondent No.4 (defendant No.3) was

also challenged being the result of fraud.

[4]. Respondents No.2 and 3 (defendants No.1 and 2) admitted the case of the plaintiff. Defendant No.3 is the husband of real sister of the plaintiff. He sold the suit property to the petitioner on 16.07.2013 vide registered sale deed and the petitioner was allegedly put in possession over *Khasra* No.48//13 (8-0). On the strength of such sale deed, the petitioner sought to get himself impleaded with the aid of Order 1 Rule 10 CPC. The suit was filed on 15.07.2013 and the property was sold to the petitioner on 16.07.2013.

[5]. Before appreciating the controversy in question, firstly it has to be seen whether the application filed by the petitioner was *bona fide* or not? Evidently, the property was sold to the petitioner on 16.7.2013. The application under Order 1 Rule 10 CPC came to be filed only on 08.08.2016. The *bona fide* of the petitioner has to be tested in terms of delay as well as limitation for seeking declaration on his independent cause of action based on his title on the basis of sale deed dated 16.07.2013. On the date of filing of application for impleadment, even cause of action for seeking declaration was beyond three years. Secondly, the controversy has to be tested under the scope of Section 52 of the Transfer of Property Act (for short 'the Act') and under Section 19(b) of the Specific Relief Act.

[6]. Learned counsel for the petitioner by referring to **M/s Wimco Limited vs. Horam and others, 2004(1) R.C.R (Civil) 437** and **Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs & Ors., 2018(1) LAR 125** contended that vendee *lis pendens* i.e the purchaser of the land during pendency of the suit can be allowed to defend the suit on behalf of its vendor to safeguard his interest.

7]. On the other hand, learned counsel for the respondents by relying upon **Vidur Impex and Traders Pvt. Ltd., and others vs. Tosh Apartments Pvt. Ltd. and others, 2012(4) R.C.R (Civil) 308**; **Bibi Zubaida Khatoon vs. Nabi Hasan Saheb and Anr., 2004(1) R.C.R. (Civil) 216** and **Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd. and others, 2013(2) R.C.R. (Civil) 875** contended that under Section 52 of the Act, the petitioner cannot claim impleadment as his presence is not at all necessary for adjudication of the question between the plaintiff and the defendant. The vendor of the petitioner is contesting the litigation very hotly and the presence of the petitioner is not necessary for complete adjudication of the issue involved in the suit. He will only follow the result in favour of his vendor or against him. The adjudication of the case is not dependant upon his presence in

the suit. Petitioner is neither a proper party as his presence would not enable the Court to adjudicate the case completely. Once he is not found to be a necessary and proper party, the Court cannot implead him as per his wishes.

[8]. Learned counsel further submitted that the status of the petitioner on being tested at the threshold of necessary party would not give any such impression that he is a necessary party, who ought to be joined in the suit and in his absence no effective adjudication can be done by the trial Court. Similarly, if the status of the petitioner is tested at the threshold of proper party, his presence would not be required for deciding the controversy completely by the trial Court. He is not a person, in whose or against him the decree will be passed as his vendor is hotly contesting the litigation. During the intervening period i.e. from the date of purchase by the petitioner i.e. 16.07.2013 by the petitioner till filing of the application on 08.08.2016, the matter was being hotly contested before the revenue officer in the context of mutation proceedings. The petitioner cannot be termed to be a *bona fide* purchaser.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. In the instant case, filing of application even after three years of date of purchase would show that the petitioner was in

the knowledge of the suit, when mutation proceedings were contested during intervening period for more than three years. Filing of an application at such a belated stage cannot be allowed, even in view of observation made by the Hon'ble Apex Court in **Bibi Zubaida Khatoon**'s case (supra). The petitioner has taken calculated risk and virtually, he has purchased the litigation. Transfer of property during litigation without permission of the Court will be hit by doctrine of *lis pendens*. Such transferee will not be entitled to be impleaded as party to the suit as a matter of right. It is for the Court to consider such prayer in the facts and circumstances of the case depending upon *bona fide* of the applicant. If the transferee makes out a case at an appropriate stage in a *bona fide* manner, the same can be considered and permission can be granted with the leave of the Court in terms of Section 52 of the Act.

[11]. Section 19(b) of the Specific Relief Act can enable the assignee by sale in a suit for specific performance to be impleaded as party. The aforesaid exception has been carved out in view of nature of suit being a specific performance, wherein the assignee by sale can protect his title and join the proceedings. The principles laid down in **Thomson Press (India) Ltd.**'s case (supra) can be relied. It is a settled principle of law that 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 party, but on those, who derive title *pendente lite*. This provision does not indeed annul the conveyance or the transfer otherwise to render it subservient to the right of a party to a litigation. The Court while considering the precedents on the subject held that the assignee by sale in a suit for specific performance can be impleaded as party to the *lis*. The present revision petition has arisen out of a suit for declaration. No such proposition is involved in the present revision petition. Petitioner is a vendee *lis pendens* as per ratio of **Bibi Zubaida Khatoon's** case (supra) and he cannot be allowed to be impleaded, even on facts and law.

[12]. Facts of **Pankajbhai Rameshbhia Zalavadiya's** case (supra) are somewhat different in the context of Order 22 Rule 4 CPC and the proposition involved therein is not squarely applicable to the facts of the present case.

[13]. For the reasons recorded above, this revision petition is found to be devoid of merits and the the same is accordingly dismissed.

September 24, 2018

Atik

(RAJ MOHAN SINGH)  
JUDGE

Whether speaking/reasoned Yes/No  
Whether reportable Yes/No