

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8900 of 2015 (O&M)

Date of decision: 04.12.2018

Ravi Kumar and another

.... Petitioners

Versus

Jaswant Singh and another

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sandeep S. Majithia, Advocate for the petitioners.
Mr. Sharad Mehra, Advocate for respondents.

B.S. Walia, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 24.11.2015 (Annexure P-1) dismissing the application under Order 1 Rule 10 read with Section 151 CPC as also order dated 24.11.2015 (Annexure P-2) dismissing application under Order 6 Rule 17 read with Section 151 CPC.

[2] Brief facts of the case leading to the filing of the instant revision petition are that the petitioners/plaintiffs had filed a suit for possession by way of specific performance of agreement to sell dated 15.09.2008 relating to the property fully detailed in the heading of the plaint. Written statement was filed by the respondents/defendants on 17.09.2012 taking up the plea that the property in question had already been transferred by Santosh Kaur (respondent/defendant No.2) qua her share vide *Tabdeel Malkiat*/transfer deed dated 21.06.2011, that perusal of the transfer deed revealed that the transfer had been made in favour of Pawandeep Singh son

of Amarjit Singh (to the extent of half share) and Santosh Kaur (respondent /defendant No.2) and that the said *Tabdeel Malkiat*/transfer deed had been executed without payment of any stamp fee and without any consideration in connivance with Jaswant Singh (respondent /defendant No.1) to wriggle out of agreement dated 15.09.2008 so as to jeopardise the rights of the petitioners/plaintiffs created under the said agreement. In the aforementioned background, it was pleaded that the *Tabdeel Malkiat*/transfer deed was not binding or operative qua the rights of the petitioners/plaintiffs. It was further pleaded that Pawandeep Singh son of Amarjit Singh and Santosh Kaur (respondent/defendant No.2) was fully aware about the agreement to sell dated 15.09.2008 entered into between the parties and despite complete knowledge of the same, he had intentionally purchased the property in question. It was pleaded that the aforementioned facts had come to the notice of the counsel while preparing arguments in the case and that in the circumstances, the petitioners/plaintiffs wanted to implead said Pawandeep Singh as a party to the suit as defendant No.3 as he was a necessary and proper party in the case and in his absence, the matter in controversy could not be effectively and completely decided. It was further pleaded that earlier the case was being conducted by some other counsel and it was only when the case was being prepared for arguments by the new counsel that the aforementioned aspect of the matter came to notice.

[3] In the application filed under Order 6 Rule 17 read with Section 151 CPC, the amendment of the plaint was sought as per details given as under:-

(a) At the end of the heading of the plaint, the following relief or declaration was sought to be added by way of amendment:-

“and declaration to the effect that the alleged Tabdeel Malkit/transfer deed dated 21.06.2011 registered vide document No.4218, bhai No.1, vol No.4451 at page No.35 executed by defendant No.2 in favour of Pawandeep Singh son of S. Amarjit Singh resident of House No.844/5, Sardar Avenue, Majitha Road, Amritsar, qua her share is illegal, null and void, without consideration and is not effective and binding qua the rights of the plaintiffs and is liable to be set aside.”

(b) Whereas after para No.8 of the plaint, para No.8-A was sought to be added by way of amendment. The same is as under:-

“8-A. While preparing arguments in this case, it has transpired from the perusal of the written statement filed by the defendant that the property in question has already been transferred by Santosh Kaur, defendant No.2 qua her share vide Tabdeel Malkit/transfer deed dated 23.06.2011 registered vide document No.4218, bhai No.1, vol No.4451 at page No.35 and perusal of the transfer deed transpires that the same has been transferred in favour of Pawandeep Singh son of S. Amarjit Singh resident of House No.844/5, Sardar Avenue, Majitha Road, Amritsar to the extent of ½ share and said Pawandeep Singh is none else but the son of Santosh Kaur, defendant No.2 and the said Tabdeel Malkit/transfer deed has been executed without payment of any stamp fee and without any consideration and this Tabdeel Malkit/transfer deed has been executed by defendant No.2 in connivance with Jaswant Singh, defendant No.1 to wriggle out of the agreement dated 15.09.2008 and to jeopardize the rights of the plaintiffs created under the said agreement and as such the said Tabdeel Malkit/transfer deed is not binding or operative qua the rights of the plaintiffs. It is also pertinent to mention over here Pawandeep Singh son of S. Amarjit Singh was fully aware about the said agreement to sell

dated 15.09.2008 entered into between the parties but despite complete knowledge of the same, he has intentionally purchased the property in question. As such the said document i.e. Tabdeel Malkit/transfer deed is illegal, null and void, without consideration and is not effective and binding qua the rights of the plaintiffs and is liable to be set aside. ”

(c) While at the end of para No.12 of the plaint, the following lines were sought to be added by way of amendment:-

“The value of the suit for the purpose of court fee and jurisdiction qua the relief of declaration is Rs.500/- and a court fee of Rs.50/- qua this relief is also affixed on the plaint.”

(d) In the last Para of the plaint in the prayer clause after the words “property in any manner” appearing in 13th line at last page of the plaint, the following lines were sought to be added by way of amendment:-

“and a decree for declaration to the effect that the alleged Tabdeel Malkit/transfer deed dated 21.06.2011 registered vide document No.4218, bahi No.1, vol No.4451 at page No.35 executed by defendant No.2 in favour of Pawandeep Singh son of S. Amarjit Singh resident of House No.844/5, Sardar Avenue, Majitha Road, Amritsar, is illegal, null and void, without consideration and is not effective and binding qua the rights of the plaintiffs and is liable to be set aside.”

[4] Apart from seeking the impleadment of Pawandeep Singh as defendant No.3 on the ground that his mother Santosh Kaur (respondent/ defendant No.2) had transferred her share vide transfer deed dated 21.06.2011 to said Pawandeep Singh the amendments as referred to above were also prayed for. The learned trial Court observed that the ground upon

which the petitioners/plaintiffs had sought the impleadment of Pawandeep Singh as a defendant and the proposed amendment in the plaint was to the knowledge of the petitioners/plaintiffs with effect from 17.09.2012 i.e. the date the respondents/defendants had filed the written statement in the case, but the petitioners/plaintiffs had not sought the relief as claimed by them at that time, rather they had let the trial of the case proceed and now that the same had been almost concluded and the case had reached at its fag end and was fixed for rebuttal evidence of the petitioners/plaintiffs, if any or for arguments that the application had been moved and since there was a delay of about three years in filing of the written statement allowing the application at such a stage would amount to *de novo* trial of the case. On the aforesaid basis, the applications for impleadment as well as for amendment were dismissed.

[5] Learned counsel for the petitioners contended that although respondent No.2-Santosh Kaur had filed a written statement on 17.09.2012 mentioning that she had already transferred her share of land vide transfer deed dated 21.06.2011, however, it was not disclosed by her as to on whose name the said land has been transferred and the same was done by respondent No.2 with a clear motive to defeat the rights of the petitioners and to cheat them. Learned counsel further contended that the petitioners tried to gather the information from the respondents as well as the Revenue Department but were not successful, ultimately, the petitioners changed their counsel and with the efforts of the changed counsel, they were successful in coming to know that respondent No.2 had transferred her share of land in the name of her son Pawandeep Singh. It was further contended by learned counsel that the petitioners are illiterates and completely dependent upon the lawyer to guide them with regard to the conduct of the case and earlier they

had not been able to get the right information and guidance and in the absence of the same, they could not come to know about the name of the person in whose name the share of respondent No.2 had been transferred and that immediately on coming to know about the name, the petitioners moved an application under Order 1 Rule 10 read with Section 151 CPC with a prayer for impleading Pawandeep Singh as a necessary party and an application under Order 6 Rule 17 read with Section 151 CPC for amending the pleadings and incorporating the facts for illegal transfer having been made by respondent No.2 in the name of her son Pawandeep Singh.

[6] Learned counsel for the petitioners further contended that Pawandeep Singh was a necessary and proper party and without impleading him the case could not be adjudicated in a legal manner and that prejudice if any caused to the respondents, could be compensated by ordering payment of costs.

[7] Per contra, learned counsel for respondents/plaintiffs while admitting that the transfer deed had been executed by respondent No.2 in favour of her son Pawandeep Singh, contended that the applications had been moved at a belated stage, therefore, did not warrant acceptance.

[8] I have considered the submissions of learned counsel for the parties. Hon'ble the Supreme Court in **Durga Prasad and another v. Deep Chand and others, 1954 AIR (SC) 75** while considering a case involving a suit for specific performance brought by prior purchaser transferee against his vendor and subsequent purchaser held that proper form of decree was to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resided in him to the prior transferee. Hon'ble

the Supreme Court further held that the subsequent transferee did not join in

any special covenants made between the prior transferee and its vendor and all that he did, was to pass on his title to the prior transferee. Relevant extract (i.e. para Nos.40 to 42) of the decision of Durga Prasad's case (Supra) is reproduced as under:-

*“40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman C.J. adopted the other course in - **Kali Charan v. Janak Deo, AIR 1932 Allahabad 694**. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.*

41. We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's

agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

*42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in - **Kafiladdin v. Samiraddin** , AIR 1931 Calcutta 67 and appears to be the English practice. See Fry on Specific Performance, 6th Edn. page 90, Paragraph 207; also- **Potter v. Sanders, (1846) 67 ER 1057**. We direct accordingly.*

[9] The decision of Hon'ble the Supreme Court in Durga Prasad's case (Supra) was followed by a Division Bench of Hon'ble the Patna High Court in case titled as **Rukmini Devi v. Pawan Kumar Gupta, 1979 AIR (Patna) 88** by holding that in a suit for specific performance of contract, decree must direct the original vendor and subsequent purchaser to execute the sale deed in favour of the petitioner (prior purchaser) and if a subsequent purchaser had not been directed to execute the sale deed in favour of the petitioner (prior purchaser), the decree could not be executed against him.

Likewise, Hon'ble the Madras High Court in **Vimala Ammal v. C. Suseela and others, 1991 AIR (Madras) 209** held that in a suit for specific performance, subsequent purchaser is a necessary party and a decree

obtained without impleading the subsequent purchaser is a nullity and cannot be executed against such subsequent purchaser. Relevant extract (i.e. para Nos.7 and 8) of the decision of Vimala Ammal's case (Supra) is reproduced as under:-

*“7. On the other hand, learned counsel for the appellant distinguished the said decision rendered in AIR 1968 Mad 388, on the footing that, in the said case subsequent purchaser was a party in the specific performance suit. In the present case the appellant-subsequent purchaser was not a party in the above said specific performance suit in O.S.3244 of 1983. Learned counsel also relied on the decision in **Chinne Vasgan v. Alamalu, 1975 1 Mad LJ 263** which held that a subsequent purchaser with the knowledge of prior agreement to sell to another, was a necessary party in the suit by the latter for specific performance and that the decree should direct both the owner and the subsequent purchaser to execute conveyance in favour of the agreement holder. The following determination in the said decision are significant:*

'But if the purchase by the third party was with the knowledge of the agreement to sell, he will hold the property subject to the obligation under S.91 of the Indian Trust Act, 1892. This section provides that where a person acquires property with notice that another person has entered into an existing contract affecting that property of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract. Thus the obligation of holding as a trustee, is only to the extent necessary to give effect to the contract. It does not affect the passing of the title. In other

words even where Section 91 of the Act applicable the transaction of sale is not made void, but the subsequent purchaser is under an obligation to convey the property to the agreement holder as and when he establishes his rights., The agreement holder can acquire title to the property only if a proper conveyance is executed by the subsequent purchaser as well These principles clearly show that the subsequent purchaser is a necessary party in a suit for specific performance and the decree should direct both the owner and the subsequent purchaser to execute the conveyance in favour of the agreement holder'. (Underlines are mine).

*This Court in the above said 1975 I MLJ 263 Chnnevannan v. Alamelu (supra) relied on **Durga Prasad v. Deepchand, AIR 1954 Supreme Court 75** and **Appa Rao v. Upendra, AIR 1953 Madras 409**. In **Rakesh Chandra v. Chuni Lal, AIR 1971 SC 1238** and **Dwarika Prasad v. Harikant Prasad, AIR 1973 Supreme Court 655** also, it was held that in the above situation, the title resided in THE SUBSEQUENT PURCHASER and he had also to necessarily join in the conveyance. So where the appellant subsequent purchaser is a necessary party, unless he is impleaded and decree is got as indicated earlier in the above said decision, the title remained with the subsequent purchaser. Therefore, E.A. No. 4250 of 1985 should have been allowed as prayed for.*

8. No doubt the learned counsel for the first respondent contends that the execution Court cannot go beyond the decree. But this contention has no merit. First of all, the appellant was not a party to the suit at all. That apart, the decree is a nullity since the necessary party was not

*impleaded. Necessary parties are parties who "ought to have been joined" under Order 1, Rule 10(2), C.P.C. that is, parties necessary to the constitution of the suit without whom no decree at all can be passed. (Vide - **Kishan Prasad v. Har Narain Singh, (1911) 33 All 272 (PC)**. It is settled law that a decree which is a nullity can be challenged even at the execution stage."*

[10] A perusal of decision of Hon'ble the Supreme Court in Durga Prasad's case (Supra) as followed by Hon'ble the Patna High Court in Rukmini Devi's case (Supra) as also in Vimala Ammal's case (Supra) reveals that in case of suit for specific performance by a prior purchaser against his vendor, the subsequent purchaser from the vendor is a necessary and proper party and that the proper form of decree in such a suit would be to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resided in him to the plaintiff. Hon'ble the Madras High Court has gone to the extent of ordering redelivery of possession to the subsequent purchaser in the absence of such subsequent purchaser having been a party to the civil suit. It, therefore, transpires that in the absence of the subsequent purchaser being impleaded as a party to the suit by the petitioners/plaintiffs against the vendor, no effective decree can be passed. Therefore, it is essential to implead the subsequent purchaser as a party to the suit.

[11] At this stage, learned counsel for the petitioners contended that although two applications had been moved i.e. one under Order 1 Rule 10 CPC for impleading Pawandeep Singh as defendant No.3 and the other under Order 6 Rule 17 CPC to carry out necessary amendments in the plaint as a consequence to the plea for impleadment of said Pawandeep Singh as

defendant No.3, yet in essence the application under Order 6 Rule 17 CPC was superfluous inasmuch as the said application was nothing except a consequence which was to ensue on the application under Order 1 Rule 10 (2) CPC being allowed and necessary directions being issued under Order 1 Rule 10 (4) of the CPC. Learned counsel contends that if the Court was to find that Pawandeep Singh is a necessary and proper party for the determination of the question in controversy then he has to be impleaded as defendant No.3 and necessary amendments made in the plaint in terms of Order 1 Rule 10 (4) of the CPC and to the said extent the application under Order 6 Rule 17 CPC was nothing except an extension of the plea in terms of Order 1 Rule 10 (4) CPC.

[12] I find merit in the plea of learned counsel for the petitioners as impleadment of Pawandeep Singh was essential for determination of the real question in controversy in the sense that said Pawandeep Singh is a necessary party in order to convey title to the petitioners in terms of decision of Hon'ble the Supreme Court in Durga Prasad's case (Supra) and that in the absence of impleadment of Pawandeep Singh as a party/defendant to the suit, no effective decree can be passed for directing the possession which had passed from the vendor i.e. respondent/defendant No.2 to said Pawandeep Singh to be conveyed by Pawandeep Singh to the petitioners/plaintiffs. Therefore, for the purpose of conveying the title to the petitioners/plaintiffs, the presence of said Pawandeep Singh is essential for an effective decree to be passed.

Having arrived at the aforementioned conclusion that Pawandeep Singh is a necessary and proper party for the passing of an effective decree, it follows that the plaint has to be amended in terms of

Order 1 Rule 10 (4) of the CPC. The plea that the application for

impleadment has been moved at a belated stage is meaningless in the light of Order 1 Rule 10 (2) CPC which provides for addition or deletion of a person as plaintiff or defendant at any stage of the suit where the Court is of the view that name of any person who ought to have been joined as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the issues involved in the suit, be added. As a consequence of allowing the application for setting aside the impugned order dismissing the application under Order 1 Rule 10 CPC and allowing the addition of Pawandeep Singh as defendant No.3, the plaint shall be amended so as to incorporate necessary changes and amended copy of the plaint shall be served on the defendants.

[13] It also needs mention that since the suit is for specific performance of agreement to sell, the plea in the application under Order 1 Rule 10 CPC is that the *Tabdeel Malkiat*/transfer deed is not binding or operative qua the rights of the petitioners/plaintiffs and that although the written statement was filed on 17.09.2012 and the application under Order 1 Rule 10 read with Section 151 CPC was moved on 07.05.2015 on the ground that time was spent in ascertaining as to in whose favour respondent/defendant No.2 had transferred the suit property. It is further contended that in terms of Article 58 of the Limitation Act, 1963 the right to sue defendant No.3 would accrue only on learning about his name and the same was only a few days prior to the moving of the application but even if it was treated with effect from the date on which the written statement had been filed in which mention of the transfer had been made without disclosing the details or the names of a person in whose favour the transfer had been made, the same was also within the period of time stipulated under

Article 58 of the Limitation Act, 1963. Although the application under Order 1 Rule 10 CPC has been moved after a period of close to two and a half years from the date of knowledge of transfer deed, but said knowledge was incomplete inasmuch as there was no details/particulars as to in whose name the transfer had been made having been disclosed in the written statement filed on 17.09.2012. Therefore, the application filed on 07.05.2015 cannot be said to be hit by ground of limitation.

[14] Accordingly, the impugned orders are set aside and in exercise of powers under Order 1 Rule 10 (2) CPC, Pawandeep Singh son of respondent/defendant No.2 Santosh Kaur and Amarjit Singh is ordered to be impleaded as defendant No.3 while in exercise of powers under Order 1 Rule 10 (4) CPC, the amendments prayed for are also allowed as the amendments are necessary for the purpose of minimizing the litigation and are necessary for the purpose of determining the real question in controversy between the parties and that although the application was moved under Order 6 Rule 17 CPC yet it is in the context of Order 1 Rule 10 CPC which the application was moved and since the application under Order 1 Rule 10 (2) CPC had been allowed then necessary consequences would ensue under Order 1 Rule 10 (4) CPC.

[15] Accordingly, revision petition is allowed in the aforementioned terms.

[16] Needless to mention, the learned trial Court shall proceed in the matter in accordance with law and decide the suit as expeditiously as possible.

(B.S. Walia)
Judge

04.12.2018
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