

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

Civil Revision No.976 of 2018.

Decided on:-March 07, 2018.

Gittan Singh.

.....Petitioner.

Versus

Dr. Kewal Krishan Garg and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ravish Bansal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

HARI PAL VERMA, J.

The petitioner has filed present revision petition under Article 227 of the Constitution of India for setting aside the order dated 02.02.2018 (Annexure P-6) passed by learned Additional District Judge, Chandigarh, whereby the application dated 06.12.2017 (Annexure P-4) filed by the respondents under Order 41 Rule 27 CPC seeking permission to produce additional evidence, was allowed.

Briefly stated, the petitioner had filed a suit for specific performance of an agreement to sell dated 05.05.2003 executed in his favour by Sham Sunder son of Radhey Krishan regarding House No.205, Sector 38-A, Chandigarh for a total sale consideration of Rs.15 lakhs. In that suit, defendant Sham Sunder filed his written statement, wherein it was averred that the agreement to sell dated 05.05.2003 is forged and fabricated. The

application under Order 39 Rules 1 and 2 CPC filed by the petitioner (plaintiff in that suit) was dismissed by the civil Court vide order dated 22.12.2003, but at the same time, a direction was issued to Sham Sunder (defendant in that suit) that he shall inform the Court about the purchaser of the suit property, if he intends to sell the same so that multiplicity of litigation can be avoided. Ultimately, the said suit was decreed in favour of the petitioner vide judgment and decree dated 20.10.2008 passed by the civil Court and the defendant was directed to execute the sale deed within two months from the date of passing of the decree failing which the petitioner/plaintiff was given liberty to execute the sale deed through the process of Court.

The judgment and decree dated 20.10.2008 were not challenged by defendant Sham Sunder and the decree was put in execution. Accordingly, sale deed dated 03.04.2013 was executed in favour of the petitioner through the Commissioner appointed by the executing Court. The proceedings for delivery of possession were initiated by the executing Court and warrant of possession was also issued in favour of the petitioner.

During this process, the respondents herein filed an appeal on 19.10.2013 against the aforesaid judgment and decree dated 20.10.2008 after an inordinate delay of about five years along with the applications for grant of leave to file the appeal, for condonation of delay in filing the appeal and for stay of the judgment and decree dated 20.10.2008 passed by the civil Court. The respondents (appellant before the lower appellate Court) have claimed that they have become owners of the suit property on the basis of registered

sale deeds executed in their favour by defendant Sham Sunder through his GPA Narinder Kumar.

During pendency of the appeal, the respondents have also filed an application under Order 41 Rule 27 CPC seeking additional evidence, which was allowed by learned lower appellate Court vide order dated 02.02.2018, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner has argued that the additional evidence permitted to be brought on record by the lower appellate Court is inadmissible and beyond pleadings/issues. No evidence which is beyond pleadings is admissible. The evidence sought to be produced is totally irrelevant for decision of the petitioner-plaintiff's suit for specific performance of the agreement to sell dated 05.05.2003 as the said evidence does not relate to any facts or circumstances of the execution of the agreement to sell. The only point which the respondents-appellants want to substantiate by leading additional evidence is the circumstances of their purchase of the suit property and in this manner, the respondents seek to establish the plea of bonafide purchasers as contemplated under Section 41 of the Transfer of Property Act, 1882. Admittedly, it is a matter of record that on the basis of agreement to sell dated 05.05.2003, the petitioner-plaintiff had filed a suit for specific performance on 17.07.2003, wherein original owner Sham Sunder was served and appeared before the civil Court. It was in his presence, injunction application was disposed of by the civil Court vide order dated 22.12.2003, wherein it was held that any sale made by Sham Sunder during

pendency of the suit will be hit by *lis pendens* and in case Sham Sunder is to sell the suit property, he has to inform the purchaser about the pending litigation. Thereafter, Sham Sunder executed GPA dated 23.02.2004 in favour of Narinder Kumar, who further executed the sale deeds dated 22.04.2004, 18.05.2004 and 01.06.2004 in favour of the respondents-appellants and they purchased the suit property during pendency of the suit and as such, the sales in their favour are hit by the principle of *lis pendens*. He has further argued that there is bar to lead additional evidence as the evidence sought to be brought on record does not fall within the ambit of Order 41 Rule 27 CPC.

On the other hand, learned counsel for the respondents has argued that for proper adjudication of the case, the additional evidence as sought to be produced by the respondents is necessary and as such, learned lower appellate Court has rightly allowed the application under Order 41 Rule 27 CPC.

I have heard learned counsel for the parties.

The respondents-appellants were not party to the civil suit instituted by the petitioner. They have never been given any intimation regarding pendency of the civil suit between the petitioner and defendant Sham Sunder. The sale deeds dated 22.04.2004, 18.05.2004 and 01.06.2004 in favour of the respondents-appellants were executed by defendant Sham Sunder through his GPA Narinder Kumar and possession of the suit property was also delivered to the respondents. Therefore, the respondents are claiming themselves to be bonafide purchasers of the suit property as there was no such

intimation by Sham Sunder that some litigation was pending between him and the petitioner.

Since Sham Sunder did not disclose the factum of pendency of civil suit between him and petitioner Gittan Singh and the respondents have become owners in possession of their respective shares in the house in question by way of registered sale deeds dated 22.04.2004, 18.05.2004 and 01.06.2004 and they are claiming themselves to be bonafide purchasers of the suit property, this Court finds that there is no illegality or irregularity in the impugned order dated 02.02.2018 passed by learned lower appellate Court, vide which the application under Order 41 Rule 27 CPC for leading additional evidence has been allowed.

Accordingly, the impugned order dated 02.02.2018 passed by learned Additional District Judge, Chandigarh is affirmed and the present civil revision, being devoid of any merit, is dismissed.

March 07, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No