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

**Civil Revision No.1906 of 2018
Date of Decision:18.01.2019**

Gurpreet Kaur and another Petitioners

Vs

Amritpal Singh and others Respondents

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

Present:Mr. Ravish Bansal, Advocate
for the petitioners.

Mr. Ashok Paul Batra, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this petition against the order dated 08.01.2018 passed by the Addl. Civil Judge (Sr. Divn.) Sri Muktsar Sahib, vide which the application under Order 22 Rule 10 read with Section 151 CPC for impleadment of the petitioners as party defendants in the suit was dismissed.

[2]. Petitioners have purchased the suit property vide two sale deeds dated 05.06.2017 and 07.06.2017 from the defendants in respect of land measuring 23 Kanals 7½ Marlas for a consideration of Rs.17,50,000/- and land measuring 25 Kanals 7½ Marlas for a consideration of Rs.19,10,000/-. Total land of the defendants was purchased besides other land owned by them. Defendants have not been left with any land

and have gone abroad.

[3]. The prayer for impleadment of the petitioners as party defendants in the suit was rejected by the trial Court on the premise that vendee *lis pendens* is covered under Section 52 of the Transfer of Property Act (hereinafter to be referred as 'the Act') and is not entitled to be impleaded as necessary party as they have to go along with their vendors.

[4]. Learned counsel for the petitioners by placing reliance upon **Amit Kumar Shaw and another vs. Farida Khatoon and another, AIR 2005 Supreme Court 2209; Thomson Press (India) Ltd., vs. Nanak Builders & Investors P. Ltd. and others, 2013(2) R.C.R. (Civil) 875; Bakhtawar Singh and others vs. Nirmal Singh and others, AIR 1973 Punjab and Haryana 448; Gurdev Singh and Anr. vs. Amarjit Singh and ors., AIR 2011 Punjab and Haryana 77; K.N. Aswathnarayana Setty (D) Tr. LRs vs. State of Karnataka and others, AIR 2014 Supreme Court 279** contended that vendee *lis pendens* can be impleaded as a party in the suit with the leave of the Court and they can be added as proper party, if their interests in the suit is substantial and not just peripheral. Though the plaintiff has no legal obligation to implead a vendee *lis pendens* as party, but the vendee *lis pendens* may join as

party under Order 22 Rule 10 CPC. The Court has discretion to implead him while exercising the same in a judicious manner. The 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 parties, but on those who derive title *pendente lite*. The provision does not intend to annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. Section 52 of the Act is not dependent upon matters of proof or the strength or weakness of the case on one side or the other in *bona fide* proceedings.

[5]. Learned counsel further submitted that the principle of *lis pendens* would apply and the petitioners would be bound by the result of the litigation. In the event of decision of the suit, the petitioners have to suffer the consequences of the litigation, therefore, it would be appropriate that they should be given a chance of defending the suit which had been filed against their vendors.

[6]. Learned counsel further submitted that the provisions of Order 22 Rule 10 CPC do not, however, compel an assignee to make an application in that behalf, but if he chooses to do so, the said application should ordinarily be allowed, unless there are some exceptional grounds for rejecting the same. Section

52 of the Act provides an exception that *lis pendens* would not apply if the proceedings in the suit are collusive and Order 22 Rule 10 CPC provides that a person, upon whom some interest in the property in dispute is devolved during the pendency of the suit, can continue with the suit with the leave of the Court, which is in fact an exception to the principle of *lis pendens*.

[7]. Learned counsel further submitted that doctrine of *lis pendens* is based on legal maxim '*ut lite pendente nihil innovetur*' i.e during a litigation nothing new should be added. The doctrine has been embodied in Section 52 of the Act and the same is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination, if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. Such person cannot deprive the successful plaintiff of the fruits of decree by way of purchase.

[8]. At last, learned counsel submitted that the conclusion of the aforesaid precedents would be that a vendee *lis pendens* cannot get himself impleaded as a necessary/proper party in a suit as a matter of right, however he can be impleaded with the leave of the Court and the discretion of the Court has to be exercised on sound judicial principles.

[9]. On the other hand, learned counsel for the respondents by relying upon **Sunil Gupta vs. Kiran Girhotra & Ors., 2007(4) R.C.R. (Civil) 553; Bibi Zubaida Khatoon vs. Nabi Hasan Saheb and Anr., 2004(1) R.C.R. (Civil) 216; Kasturi vs. Iyyamerumal, 2005(2) R.C.R. (Civil) 691 and Dhannalal vs. Kalawatibai, 2002(2) R.C.R. (Rent) 126** contended that the petitioners can only be impleaded as party defendant in the suit with the leave of the Court and the leave should not be granted in favour of person, who has taken calculated risk of purchasing a litigation. Plaintiff as a *dominus litus* cannot be forced to fight against a person, with whom he does not wish to contest.

[10]. Learned counsel further submitted that under Section 52 of the Act, presence of the petitioners is not at all required for adjudication of the *lis* between plaintiff and defendants. Vendors of the petitioners are contesting the litigation and there is no overt act on their behalf to show any collusion with the plaintiff, who happens to be their father.

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

[12]. Even if, the petitioners have purchased the entire share of the defendants during pendency of the suit, they cannot be impleaded as party defendants without leave of the Court and

for granting leave of the Court, judicial propriety demands that discretion has to be exercised on some material grounds. There is no evidence on record to show any collusion between the plaintiff and defendants in prosecution of the suit which has already attained the stage of leading defendant's evidence. Plaintiff has already concluded his evidence. The effort on behalf of the petitioners to appear as DWs has not been allowed by the trial Court.

[13]. The discretion exercised in **Thomson Press (India) Ltd.'s** case (supra) is distinct inasmuch as the scope of Section 52 of the Act was considered viz-a-viz. Section 19(b) of the Specific Relief Act. There is no dispute with regard to the proposition that the vendee *lis pendens* can be allowed to defend the suit with the leave of the Court which has to be granted after appreciating incriminating material on record. The said exercise cannot be done in a routine manner.

[14]. The view expressed in other precedents cited by learned counsel for the petitioners is also the same. The leave of the Court has to be granted on the satisfaction of the Court that there are chances of any collusion between plaintiff and defendants and in case such collusion takes place, there is every likelihood of the interest of the vendee *lis pendens* may get frustrated. The vendors of the petitioners are contesting the

litigation and no overt act of collusion between the parties to the suit has been projected by the petitioners as on date.

[15]. Since the petitioners have purchased the suit land in entirety during pendency of the suit, therefore, they had a constructive notice of pending litigation. 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. No material has been highlighted to show any instances of collusion between the original party to the suit, therefore, the leave of the Court for impleading vendee *lis pendens* cannot be granted in a routine manner, however liberty can be granted to the petitioners to file fresh application on finding that on account of any collusion between the original parties their *pendente lite* title is going to be threatened. This is more so in view of the fact that the provision does not annul the conveyance to render it subservient to the right of a party to the litigation.

[16]. With the aforesaid liberty, this revision petition is disposed of.

January 18, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No