

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

CR No.7144 of 2016 (O&M)

Date of decision:15.01.2019

M/s Indian Oil Plaza

... Petitioner

Vs.

Monia Khanna alias Monika Khanna and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Chawla, Advocate
for the petitioner.

Mr. Vaibhav Narang, Advocate
for the respondents.

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.7144 of 2016 and 7171 of 2016, preferred against the impugned order dated 20.07.2016 (Annexure P-1), whereby, the application filed by the petitioner-plaintiff under Order 1 Rule 10 of Code of Civil Procedure for impleading the transferees of sale deed, namely, Pran Nath Kanwal and Sanjeev Kumar Mehra as defendants no.4 and 5, has been dismissed.

Mr. Anil Chawla, learned counsel appearing on behalf of the petitioner-plaintiff submitted that two suits were filed for declaration and permanent injunction restraining the defendants from selling, alienating the suit property bearing private no.30 khasra no.82/10, 82/11 measuring 150

square yards and recovery of amount on the premise that defendant no.1 was employee of the petitioner at his petrol pump and maintaining the account books, much less sale register. She mis-appropriated the amount of Rs.37,29,256.70 approximately and FIR bearing No.249 dated 12.06.2010 under Sections 381, 420 IPC was registered at police station Civil Lines Amritsar, wherein, as per the judgment dated 08.07.2016, she was convicted by the competent Court.

Defendant no.1 alleged to have purchased the properties in question and interim application was filed which was dismissed by holding that rights of plaintiff can be protected as per the *doctrine akin to "lis pendens"*. However, during the pendency of suits, defendant no.1 transferred the suit property, vide sale deed dated 18.08.2011 and in this manner, moved two applications, one for amendment of the plaint for incorporating para no.10A and as well as impleadment of the transferee. The trial Court allowed the application for amendment of the plaint but refused to impleadment of transferee. The order under challenge, thus, suffers from illegality and perversity. The plaintiff should not be relegated to file an independent suit.

Per contra, Mr. Vaibhav Narang, learned counsel for the respondents opposed the aforementioned prayer on the premise that allegation of mis-appropriation and purchase of the property was seriously denied, for, same cannot be ground for seeking injunction and recovery. The amendment was at a stage after framing of the issues. The trial has already been concluded and it tantamounts to de novo of trial and thus, urged this

Court for dismissal of the petitions by upholding the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Chawla. Once the Court below had already allowed the application for amendment of the plaint claiming declaration, the impleadment of transferee as defendant is sine qua non as tomorrow situation may not arise in effecting third party rights by filing an objection. It would prevent the multifarious of litigation. Had the defendant not sold the property, there could not have been an occasion for amendment challenging the sale deed and impleadment. It is strange that once the Court had allowed the application for amendment, did not allow the application for impleadment as both simultaneous relief are inevitable.

For the reasons mentioned above, impugned order is hereby set aside and revision petitions are allowed. The beneficiary transferee is also impleaded as defendant in the suit.

(AMIT RAWAL)
JUDGE

January 15, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No