

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

CR No.8095 of 2018

Date of Decision : 21.01.2019

Rohit Gupta and others

.....Petitioners

Versus

Daksha Bhardwaj and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Deepak Gupta, Advocate
for the petitioners.

Mrs. Alka Sarin, Advocate
for respondent No.1.

Mr. Navin Mahajan, Advocate
for respondents No.2 and 3.

Mr. Paras Chaudhary, Advocate
for respondents No.4.

SUDIP AHLUWALIA, J. (ORAL)

The petitioners in the present case happen to be the subsequent purchasers of the disputed property which is the subject matter of Civil Suit No.46 dated 10th April, 2017, pending in the Court of Ld. Civil Judge (Junior Division), Gurugram.

2. Respondent No.1, who happens to be the wife of respondent No.2-Dr. Anmol Sethi, had filed the suit seeking decree for declaration that she is a co-owner in Flat No.VP-C102, First Floor, MGF, The Vilas, Sector 25, Gurugram to the extent of half share along with all rights appurtenant thereto, and therefore was entitled to get the records

corrected reflecting her to be a co-allottee/co-owner of the said flat to the extent of share claimed by her with a consequential relief for permanent injunction to restrain the defendant No.1 (her husband) from creating any third party right or other encumbrance upon the said flat, besides also from seeking a decree for rendition of accounts against the said defendant for all the amounts she claimed to have given to him after their marriage.

3. The petitioners are aggrieved that they have been wrongly joined as parties in the pending suit since they are innocent purchasers without notice, and so the doctrine of *lis pendence* is not applicable against them.

4. To support this contention it has been submitted on their behalf that the original application filed under Order 39 Rules 1 and 2 read with Section 151 of the CPC by the plaintiff-respondent No.1 seeking to injunct her husband from alienating or creating any encumbrance upon the disputed Flat was rejected by the Ld. Trial Court vide its Order dated 30th May, 2015 (Annexure P-6), and the appeal preferred thereafter was also dismissed by the Ld. Additional District Judge, Gurgaon vide Order dated 22nd December, 2015 (Annexure P-7), in which the Ld. Appellate Court even went to the extent of holding that there was no necessity for the respondent even to seek permission from the Court before selling or alienating the disputed flat to anyone.

5. The relevant observations in this regard recorded by the Ld.

Appellate Court in Para 14 of its Order dated 22nd December, 2015 are set out as below :-

“There is further no necessity to seek the permission from the court before selling or alienating the flat in question to any one, in as much as any transfer pendent lite shall be hit by the principle of lis pendence under Section 52 of the Transfer of Property Act. But only if the plaintiff ultimately succeeds to prove that she was co-owner in the flat in dispute.”

6. It is thus seen that the Ld. Appellate Court had specifically held that there was no need for the original respondent to seek any permission from Court for selling or alienating the disputed flat since any such transfer would be hit by the principle of *lis pendence* under Section 52 of the Transfer of Property Act, which would however come into operation, “if the plaintiff ultimately succeeds to prove that she was co-owner in the flat in dispute”.

7. Now the contention on behalf of the petitioners raised before this Court was that the principal relief sought for by respondent No.1-plaintiff was essentially only by way of rendition of accounts since admittedly she is not an actual co-allottee/co-owner of the disputed flat so far, and that *per se* her suit would be barred in view of the provisions of the Benami Transactions Act.

8. This Court is however not in agreement with the aforesaid submissions. Without venturing to make any pre-judgment on the likely

outcome of the suit filed by the respondent No.1-plaintiff, it may be observed that in view of the fact that respondent No.1-plaintiff happens to be the wife of the original defendant/vendor of the petitioners, the existence of a close fiduciary relationship between both of them cannot be denied outright. Furthermore, as already noted earlier, the main prayer in the suit filed on behalf of respondent No.1 is for a declaration to the effect that she along with her husband (respondent No.2) is a co-allottee/co-owner in the disputed flat to the extent of half share in view of the fact that she had delivered sufficient money to him after their marriage purportedly for the purpose of acquiring the disputed property. It is not for this Court to prejudge whether such suit filed by respondent No.1 is likely to be decreed or dismissed on merits, which essentially falls in the domain of the Ld. Trial Court. Suffice it to say, in view of the specific observation of the Ld. Appellate Court in dismissing the appeal against rejection of the temporary injunction application of the respondent No.1, sale of the disputed flat in favour of the present petitioners during pendency of the proceedings in the Ld. Courts below would certainly appear to attract the principle of *lis pendence*.

9. For the aforesaid reasons this Court finds no substantive merit in the present petition, which is accordingly dismissed.

January 21, 2019

Dpr

(SUDIP AHLUWALIA)
JUDGE

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