

203

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

CR-833-2018

Date of Decision: 24.01.2019

Madan Lal

.....Petitioner

Vs

Anita Sharma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Rahul Sharma, Advocate
for respondent No. 1.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has challenged the order dated 25.10.2017 passed by Civil Judge (Jr. Divn.), Garhshankar, vide which application under Order 1 Rule 10 CPC was dismissed on the ground that the petitioner is a bonafide purchaser and is hit by principle of lis pendens by operation of Section 52 of Transfer of Property Act.

Learned counsel for the petitioner submits that civil suit for specific performance was filed on 18.05.2016 by plaintiff/respondent No. 1 against respondent No. 2 (Dinesh Kumar) on the basis of agreement to sell dated 05.01.2012. The

agreement was executed by Kapil Dev, Power of Attorney of Dinesh Kumar. The suit was filed in respect of land measuring 15 kanal 05 marlas. The defendant-Dinesh Kumar got the Power of Attorney cancelled on 14.03.2016 and vide Power of Attorney on even date appointed one-Shweta as his Power of Attorney. Shweta executed sale deed in favour of petitioner on 18.05.2016 itself that is the date of filing of the suit. But sale deed executed on 14.03.2016, the trial Court granted stay on 18.05.2016. The petitioner filed an application under Order 1 Rule 10 read with Section 151 CPC for his impleadment as party/defendant No.2 in the suit being assignee. At the time of issuing notice of motion on 08.02.2018, following order was passed:-

*“Learned counsel for the petitioner, inter alia, contends that the application under Order 1 Rule 10 CPC in suit seeking specific performance of agreement to sell dated 05.01.2012 titled as “Anita Sharma Vs. Dinesh Kumar” at the instance of the petitioner has erroneously been dismissed, as on 18.05.2016, a sale deed was executed in favour of the petitioner, therefore, in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. and others 2013(5) SCC 397,** the impleadment of the petitioner would be essential and necessary party for adjudication of the lis.*

Notice of motion for 09.07.2018 to respondent No. 1 only.

Dasti also permitted.

In the meantime, the trial Court is directed to adjourn hearing of the suit beyond the date fixed by this Court.”

Learned counsel for the respondent has opposed the revision petition on the ground that calculated fraud has been committed by the petitioner in collusion with Dinesh Kumar.

I have considered the submission made by learned counsel for both the parties. Even if petitioner is proved to be not a bonafide purchaser, section 19 (b) of 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 being a specific performance based on the ratio of **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. and others 2013(2) RCR (Civil)875**. It is a settled principle of law that 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 party, but on those also who derive title *pendente lite*. But this provision does not indeed to annul the conveyance or the transfer otherwise to render it subservient to the right of a party to a litigation.

For the reasons mentioned above, I deem it appropriate to set aside the impugned order dated 25.10.2017 passed by

the trial Court. This revision petition is allowed. Normal consequences to follow.

January 24, 2019

Harish Kumar

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	Yes/No