

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

CR-2657-2019 (O&M)

Date of decision: 13.05.2022

Ishwar Sharma

....Petitioner

Versus

Rohtash and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Mohunta and
 Mr. Satyendra Kumar, Advocates for the petitioner
 Mr.R.K.Saini, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

An application submitted by the petitioner under Order 1 Rule 10 Code of Civil Procedure, 1908, has been dismissed by the trial court. A suit has been filed by Rohtash against his nephew and aunt. In other words the plaintiff and defendant No. 1 and 2 are closely related. The plaintiff claims that the Will executed on 26.2.1971 by Ram Gopal is forged. During the pendency of the suit 32 kanals of land was sold by Yad Ram in favour of Bharat Bhushan. Thereafter, the petitioner has purchased some part of the land vide registered sale deed dated 27.05.2013. The original defendants are not contesting the suit. The petitioner in order to protect his ownership filed an application for impleadment. He is not a member of the family. The court has dismissed the application on the ground that the transfer in favour of petitioner is governed by the rule of lis pendens. Undisputedly, the rule of lis pendens applies to the transactions during the pendency of the suit. However, the court was required to examine the facts of the case. Here is a case where the defendants, who are the family members of the

plaintiff, have chosen not to contest. In such circumstances, unless suit is defended, an ex parte decree would be passed. The petitioner has purchased the property by a registered sale deed on the payment of sale consideration. In such circumstances, the learned trial court has committed a manifest error in dismissing the application under Order 1 Rule 10 Code of Civil Procedure, 1908. Hence, the order dated 05.03.2019 under challenge is set aside. Let the petitioner be impleaded as party and be permitted to contest the suit.

The revision petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

13.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE