

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

CR-344-2023(O&M)

Date of decision:-19.1.2023

Harjinder Singh

...Petitioner

Versus

Amar Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dheeraj Mahajan, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that plaintiff Harjinder Singh had brought a suit for declaration that he along with defendant No.19 Lakhbir Singh are co-sharer in joint possession to the extent of 2369/4216 share in the suit land measuring 210 kanals 16 marlas situated at village Attari, Tehsil and District Gurdaspur with consequential relief of permanent injunction for staying the partition proceedings initiated by defendants No.2 and 3 pending before A.C. Ist Grade, Kalanaur, Tehsil and District Gurdaspur till the dispute with regard to the suit land is not finally decided between the parties and further for restraining defendants No.2 and 3 from alienating the the suit land more than their share.

2. On getting notice, the defendants appeared and contested the

suit. During the course of proceedings, the plaintiff filed an application under Order 1 Rule 10 read with Section 151 CPC for impleading Ms.Rajwinder Kaur as a defendant in this case contending that during the pendency of the suit defendants No.2 and 3 have sold the suit property to said Ms.Rajwinder Kaur vide sale deed dated 7.2.2020 and thereafter Ms.Rajwinder Kaur has filed partition application before revenue officials at Kalanaur and the appeal against the partition proceedings is pending before SDM/Collector, Kalanaur, as such Ms.Rajwinder Kaur is a necessary party in the suit.

3. The application was resisted on behalf of the defendants contending that it has been filed to delay the proceedings only and a stranger or a third party to a contract having an independent title and possession over the property is not entitled to be added as a party.

4. After hearing learned counsel for the parties, the trial Court of Civil Judge (Sr.Divn.), Gurdaspur dismissed the application vide impugned order dated 3.12.2022. For ready reference, the operative part of the order is being reproduced as under:-

4. Heard. Record perused. Plaintiff has filed the present suit for declaration to the effect that he along with defendant no.19 are co-sharer in joint possession to the extent of 2369/4216 share in the land measuring 210 Kanals 16 Marlas, fully detailed and descried in the head note of the plaint. It is not disputed that defendants no.2 and 3 have alienated suit property to Rajwinder Kaur. A necessary party is the person who ought to be joined as party to the suit and in those absence an effective decree cannot be passed by the Court.

Settled principle law is that alienation during pendency of suit shall be hit by principle of lis pendence and the same does not affect the rights of plaintiff, therefore, a person in whose favour alienation is executed is not a necessary party. Thus, in the present case Rajwinder Kaur is not necessary party. The facts of the case law cited supra by the learned counsel for plaintiff are not applicable to the facts of the present and I rely upon the case cited supra by the learned counsel for defendants. Therefore, I find no merit in the present application and the same is hereby dismissed.

5. Such order left the plaintiff aggrieved and he has approached this Court by way of filing the present revision petition praying that the same be accepted, the impugned order be set aside and the application under Order 1 Rule 10 filed by the plaintiff be allowed.

6. I have heard the learned counsel for the revision petitioner besides going through the record and I do not find any illegality or infirmity in the impugned order, which might have called for interference by this Court while exercising revisional jurisdiction.

7. The trial Court has rightly observed that any alienation made by the defendants during the pendency of the suit shall be hit by principal of *lis pendens* and the transferee need not be added as a party in the suit. The application was rightly rejected and no fault can be found with the impugned order, rather the same is result of proper and judicious exercise of discretion without any element of arbitrariness or perversity.

8. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

19.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No