

2023:PHHC:157779

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

CR-3485-2023 (O&M)
Date of decision: 08.12.2023

Anmol Dhaliwal

....Petitioner

Versus

Babbaldeep Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Inderjit Sharma, Advocate for the petitioner

Mr. Imaan Singh Khara, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. The correctness of an interlocutory order passed on 28.02.2023 is assailed by the applicant. He claims to be the purchaser of the property sold vide sale deed dated 11.12.2020 from Smt. Bachint Kaur, the plaintiff in the pending suit.

2. Smt. Bachint Kaur filed a suit for the grant of decree of declaration that the demarcation report dated 28.08.2019 is illegal, null, void and not binding on her rights. In the demarcation report, it was reported that there exists an alleged passage whereas Smt.Bachint Kaur claims that there is no passage. The applicant filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). The same has been dismissed on the ground that the applicant has no cause of action against the defendant and the plaintiff, being the purchaser, during the pendency of the suit, is not impleaded as a party.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Learned counsel representing the petitioner submits that Smt. Bachint Kaur has sold her entire land measuring 14 kanals 14 marlas in favour of the petitioner. He submits that she would not prosecute the case once she has sold the property.

5. On the other hand, the learned counsel representing the respondent submits that the petitioner is governed by the doctrine of lis pendens and therefore, he cannot be impleaded as the party. He further submits that it will also result in further prolonging the trial of the case.

6. This Court has considered the submissions made by the learned counsel representing the parties. In fact, the applicant as well as the trial court, has overlooked the Order XXII Rule 10 CPC which is extracted as under:-

“10. Procedure in case of assignment before final order in suit:- (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

7. It is evident that in the case of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by the leave of the Court, continue by or against the person to or upon whom such interest has been devolved. In these circumstances, the court should have permitted the substitution of the petitioner in place of Smt. Bachint Kaur, who is left with no right, title or interest in the property. The rule of lis pendens makes the sale or transfer subservient to the decision of the case. However, it does not prohibit the purchaser from becoming a party. The trial court has also erred in observing that the petitioner has no cause of action against the defendant. The petitioner and Smt. Bachint Kaur have the same cause of action.

8. Keeping in view the aforesaid facts, the impugned order is set aside. The applicant is permitted to be substituted in place of Smt. Bachint Kaur, the plaintiff.

9. The revision petition stands allowed.

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

08.12.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE