

2023:PHHC:057911

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4993-2022 (O&M)

Date of Decision: April 24, 2023

Mamta and another

...Petitioners

Versus

Hem Raj Khanna and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ajay Jain, Advocate
for the petitioners.

Mr.Shalender Mohan, Advocate
for respondents No.1 and 2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 11.10.2022 passed by learned Civil Judge (Jr. Divn.), whereby, an application filed by the petitioners under Order 22 Rule 10 read with Section 151 CPC, has been dismissed.

The material facts, as culled out from the paperbook are that, initially, respondents No.1 and 2 (who are plaintiffs before the lower Court) had filed a suit for seeking relief of separate possession of half share through partition by metes and bounds, in respect of shop consisting of two 'khans' bearing No.21, Ward No.XV, as detailed in paragraph 1 of judgment, copy whereof is Annexure P-1.

As evident from the judgment dated 22.05.2018 (Annexure P-

1), the said suit was dismissed. Respondents No.1 and 2 (plaintiff) had filed an appeal. Vide order dated 16.12.2021, the judgment and decree dated 22.05.2018 was set aside and the case was remanded back to the lower court, with the direction to take additional evidence of the plaintiff, as permitted by the Court and also to afford an opportunity, to the defendant, to rebut the additional evidence and learned lower Court was further directed to record/return its finding on the aspect of partial partition of the suit property and to decide the suit afresh on merits. Copy of the said order is Annexure P-2.

However, on 08.04.2022, the petitioners, namely Mamta and Kiran, had filed an application under Order 22 Rule 10 read with Section 151 CPC, thereby, asserting about respondent No.3-Radha Krishan (defendant before the Court below) to have sold his share, in the suit property, in their favour, vide Vasika No.9926 dated 14.01.2020. It was also pleaded therein, that they purchased the suit property from the defendant-Radha Krishan, to the extent of his share. The interest has devolved upon the petitioners and in view of the above, the petitioners want to continue the said suit, in place of defendant-Radha Krishan. Copy of the said application is Annexure P-3.

However, in pursuance of the notice issued, respondents-plaintiffs had filed their reply, inter alia, stating that the application is false and frivolous and that the alleged sale deed had come into existence, without the permission of the Court and is hit by Section 52 of the Transfer of the Property Act, 1882. The petitioners are neither necessary nor proper parties. However, the Court below, after hearing the parties concerned,

vide impugned order dated 11.10.2022, dismissed the application for substitution of the petitioners, in place of defendant-Radha Krishan, in the suit, while holding in the facts and circumstances, doctrine of lis-pendence will apply and petitioners would be bound by the order in the suit.

Learned counsel for the parties heard.

In order to adjudicate the controversy involved in the present petition, the provisions of Order 22 Rule 10 CPC, is reproduced, as herein given:-

“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, 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).”

In view of this provision, the finding so recorded by learned lower Court is erroneous.

Clause 1 of Rule 10 of Order 22 CPC, provides for continuation of the suit by or against the person to or upon whom such interest has come or devolved, where there is assignment, creation or devolution of any interest during the pendency of the suit. Creation and devolution of interest, in the part of the suit property upon the petitioners by virtue of registered sale deed dated 14.01.2020, as such, is not a disputed fact. In fact, the respondents-plaintiffs only submit that said document is collusive. However, at this juncture, it is pertinent to note that seemingly, this assertion of collusion is vague, as no substantive material,

to so establish, has come on record.

In the given circumstances, when the parties are interested to continue the suit, the Court had no discretion, much-less a judicial discretion but to allow the suit to be continued against the petitioners by his substitution in place of defendant in the suit, on the strength of the aforesaid sale deeds. In this regard, reliance has been placed upon the judgment passed by this Court in ***Pipal Singh vs. Anokh Singh and others, decided on 30.08.2011 in CR-2678-2011.***

As observed in the above-said judgment, even the application of principle of *lis pendence*, does not in any manner, prevent a person upon whom the interest in the suit property is created or devolved upon, during the pendency of the suit, to approach the Court for his/her substitution as a party. In the aforesaid judgment, it was observed as herein given:-

“XXXX.....True, logical and conclusive interpretation of Order 22 Rule 10 of the Code of Civil Procedure is that a person in whose favour an interest is created or devolved by assignment, steps into the shoes of the party to the suit whose interest such person has acquired by such assignment. Even though, Section 52 of the Transfer of Property Act, prohibits transfer of property during the pendency of the suit, except with the authority of the Court, however, such transfer per se does not become illegitimate. The only impact of Section 52 of the Transfer of Property Act is that the purchaser of the property during the pendency of the lis may be bound by the decree and such transferee may not be a necessary or a property party to be impleaded under Order 1 Rule 10 of the Code of Civil Procedure. However, the scope of Order 22 Rule 10 of the Code of Civil Procedure is slightly different and under this provision by virtue of creation or devolution of interest during the pendency of the suit, the party in whose favour such right or interest is created or devolved upon, is entitled to step in the shoes of the litigant whose interest is devolved upon him. In such a situation, Section 52 of the Transfer of Property Act, does not operate as an embargo for permitting the assignee to step into the shoes of the litigating party on the strength of creation or devolution of any interest in the suit property.”

A similar question came up for consideration before this Court in the case of ***Jagdish Chander & another Vs. Om Piari & others, 2008 (4) R.C.R. (Civil), 56***, wherein it has been held as herein given:-

"12. Order 22 Rule 10 of the CPC deals with a situation, wherein pending a lis, a party assigns property or during the pending lis, an interest is created in or devolves upon a person not arrayed as a party. Such a person may, subject to the discretion of a Court, file an application praying that he be arrayed as a party, whether as a plaintiff or a defendant subject to his establishing assignment, creation or devolution of any interest in the suit property during the pendency of the suit. The words and expressions appearing in Order 22 Rule 10 of the CPC unlike the words and expressions used in Order 1 Rule 10 of the CPC, permit the suit to be continued by or against the person to or upon whom such interest has come to be assigned or devolved, subject as always to the judicial discretion of a Court. It is, therefore, apparent that the assignee of suit property, pending CR No.2678 of 2011 (6) adjudication of a lis, cannot be impleaded as a party under Order 1 Rule 10 of the CPC but may be allowed to continue or defend the suit under Order 22 Rule 10 of the CPC, by stepping into the shoes of the party assigning property to him."

Considering the ratio of the aforesaid judgment fully applicable to the facts of case, under consideration in the aforesaid Pipal Singh's case, the petition was allowed and the concerned applicant was allowed to step into the shoes of the defendants, on the strength of the sale deeds.

Furthermore, it was also observed that in the event, the plaintiff intends to continue with the suit, it shall be continued against the applicant as an assignee of concerned defendants.

Furthermore, the provision of Order 22 Rule 10 CPC being of enabling character, do not compel the assignee or party to a suit or appeal

to make an application during the pendency thereof. If no such application is made, then the suit or appeal will be continued and will be decided between the parties to the lis, but the decision will bind the assignee, on whom interest in the subject matter in the litigation has devolved, during the pendency of the suit.

However, it cannot be said that in any case, the assignee, so circumstanced, should promptly take advantage of this statutory provision. However, if he does not do so, then he does so on his own peril and at his own risk.

Now, reverting to the case in hand, the sale deed in question was executed in favour of the petitioners by defendant-Radha Krishan, to the extent of his share only and possession had been handed over. In these circumstances, the petitioners, as such, have stepped into the shoes of the defendant. No doubt, vide order dated 16.12.2021, the impugned judgment and decree dated 22.05.2018 was set aside by learned lower Appellate Court and the case was remanded back to the Court below, with the direction to take additional evidence of the respondents-plaintiffs, as permitted by that Court and also to afford an opportunity to the defendant to rebut said additional evidence, but however, this direction, so give by learned lower Appellate Court, as now submitted by learned counsel for the petitioners, does not cause any obstruction to the petitioners, from becoming parties to the proceedings, while stepping into the shoes of defendant-Radha Krishan.

Even if the petitioners join the proceedings, in lieu of defendant-Radha Krishan, then also, learned Court below shall be bound to

record the finding, as so observed by learned lower Appellate Court vide order dated 16.12.2021, unless and until, this is set aside by any Superior Court.

In the impugned order, the Court below had placed reliance upon the judgment passed in Dhanna Singh vs. Baljinder Kaur, 1997(2) Apex Court Journal 150(SC), Jaswinder Singh vs. Sohan Singh and others, 2005(1) PLR 593, wherein, it was observed as quoted by learned lower Court that '***the subsequent purchaser does not get any right to be impleaded as a party. Therefore, it cannot possibly be said that they are necessary parties to be impleaded as defendants in the main suit. This matter is no more res integra and is well settled.***' However, the observations so made and so relied upon by learned lower Court, related to the cases, where the facts of the cases, under consideration were different. In ***Dhanna Singh's case (supra)***, the facts were about the suit for permanent injunction, having filed by the respondents and therein, despite availing several opportunities, no evidence was adduced by the defendant and the Court had closed the evidence of the defendant, while passing an order, on the statement of the counsel that the first defendant was not willing to lead any evidence. An application for impleadment was filed earlier by the appellant, who is a subsequent purchaser from the first defendant. After impleadment, he filed an application for adduction of evidence, which was rejected. Under these circumstances, it was observed that the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the first defendant, who has given

up his right to lead evidence. In view of the same, he was held not entitled to any right to lead any evidence.

Likewise, even facts of *Jaswinder Singh's case (supra)*, are distinguishable from the facts of the case in hand and therefore, no right to contest the suit and file separate written statement was given to the subsequent purchaser.

In the light of the aforesaid discussion, the present petition is hereby allowed and the impugned order dated 11.10.2022 is set aside. The petitioners are allowed to step into the shoes of defendant-Radha Krishan, on the strength of the sale deed dated 14.01.2020. In the event, respondents No.1 and 2-plaintiffs intend to continue with the suit, it shall be continued against the present petitioners, as assignee of defendant-Radha Krishan.

April 24, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No