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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 25.01.2024.

Ravinder Singh

...Petitioner.

Versus

Harjit Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Paritosh Vaid, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 28.11.2023 (Annexure P-8) passed by learned trial Court, vide which the application under Order 1 Rule 10 CPC filed by the petitioner, was dismissed.

2. The plaintiff Harjit Singh filed a suit for declaration to the effect that mutation No.4505 dated 17.01.2017 sanctioned by the revenue department in favour of the defendants and plaintiff pertaining to the suit property as detailed in the head note of the plaint, as per the jamabandi for the year 2015-2016 in favour of the plaintiff and defendants is null and void, having no value in the eyes of law and is liable to be set aside alongwith the suit for permanent injunction restraining the defendants not to alienate, change the nature of the property and take any type of loan upon

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the property in dispute during pendency of the present suit.

3. During the pendency of the proceedings in the present suit the petitioner who was not a party to the suit, moved an application under Order 1 Rule 10 CPC with the averments that as per the revenue record, plaintiff Harjit Singh, defendant No.1 had been shown as owners of 1/3rd share each and defendants No.2 and 3 were the owners of 1/3rd share. Defendant No.1 has already sold his 1/3rd share and defendant No.3 has also sold his 1/6th share in the property of village Taragarh and now they were left with no share in the same. It was alleged that defendants No.1 and 2 had sold their share in the suit property of Village Taragarh to the applicant measuring 28 kanals 18 marlas vide registered sale deed dated 06.04.2022. As such now applicant is owner in possession of the suit property purchased by him from defendants No.1 and 2. It was also alleged that the petitioner had no knowledge of the pending litigation pertaining to the suit land and he is the bonafide purchaser for consideration and when he gained knowledge about the pending litigation then he filed an application under Order 1 Rule 10 CPC for impleading him, being a subsequent purchaser of a share of suit land involved in the present case.

4. This application was contested by plaintiff/ respondent by filing reply to the effect that the said application was not maintainable. As applicant had purchased part of suit land on 06.04.2022, during pendency of the present suit, so the law of lis pendens is applicable to the said sale of suit land by defendant Manjit Kaur and defendant Prabhjot Kaur and rights of the applicant shall be subject to the final order of the Court. It was alleged that he has no right to appear and contest the present suit on merits

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as applicant in connivance with defendants No.1 and 2 got executed the sale deed and the said application has been moved only to delay the proceedings of the present case with malafide intention.

5. This application was dismissed by the Trial Court vide order dated 28.11.2023. Aggrieved by the said impugned order, the present revision petition has been filed.

6. Learned counsel for the petitioner has contended that the provisions under Order 1 Rule 10 CPC have not been appreciated by the trial Court in its right perspective. By placing reliance upon the judgment of Hon'ble Supreme Court in **Amit Kumar Shaw and another Vs. Farida Khatoon and another, 2005(2) R.C.R (Civil) 651**, he has contended that the presence of the petitioner would enable the Court to completely, effectively and properly adjudicate upon all the matters and issues. He is the bonafide purchaser of a part of the suit property for valuable consideration and decision of trial Court will directly affect his rights pertaining to the share of suit land purchased by him vide sale deed dated 06.04.2022. He has also contended that the trial has also not taken the judicial note of the settled law that where technicalities and substantial justice are pitted against each other, then it is the substantial justice which is to be preferred.

7. I have heard learned counsel for the petitioners and have gone through the relevant record.

8. The defendants in the suit by virtue of Section 52 of Transfer of Property Act were prohibited to deal with property and could not transfer or/ otherwise deal with it in any way affecting the rights of plaintiff except with the order or authority of Court. Admittedly, as order or authority was not

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obtained for the alienation, it would be hit by the doctrine of lis pendens by operation of Section 52 of Transfer of Property Act.

9. There is no absolute rule that the transferee pendente-lite without leave of the Court should in all cases be allowed to join and contest the pending suits. The Court has a discretion in the matter which is to be exercised judicially in the facts and circumstances of the case and bonafide of the applicant. In *Amichand Aggarwal Vs. Nabi Hassan, 2005(1) CCC 323*, the Apex Court has held that “if the transferee makes an application after years together at the fag end of the litigation, he should not be allowed to be impleaded. Such transferee takes a calculated risk knowing fully well the consequences.”

10. In the instant case the trial Court has assigned cogent reasons for rejecting the application under Order 1 Rule 10 CPC by considering that the application has been moved at fag end of the case when it was fixed for defendants’ evidence and prima facie the action of alienation does not appear to be bonafide as counsel for the applicant was the same counsel as that of defendant No.2.

11. So far as case law cited by learned counsel for the petitioner is concerned, the same is not applicable to the case in hand, as in that case, the application under consideration was not for addition of party, but for substitution, as the owner had sold the suit property to the applicant.

12. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for, while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands

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dismissed.

13. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

25.01.2024.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No