

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4760-2018 (O&M)
Date of decision : 06.03.2024

Bahadur Singh & Another ... Petitioner(s)

Versus

Sube Singh (deceased through LRs) & Others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suresh Kumar Kaushik, Advocate for petitioner No.2.

Mr. Sanjay Vij, Advocate for respondents No.1 to 3.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 28.05.2018 dismissing the application filed by the petitioners herein for being impleaded as a party before the First Appellate Court.
2. Brief facts relevant to the present *lis* are that one Ram Kanwar, who had *bhondedari* rights, sold his *bhondedari* rights in the year 1992 to Sube Singh, Dharampal Singh and Madan Pal - defendant Nos.1 to 3 in the suit. In 2011 Ram Kanwar filed a suit for declaration and consequential relief of permanent and mandatory injunction that the sale deeds dated 16.11.1992, 19.11.1992, 20.11.1992, 17.11.1992 were a result of fraud and were illegal, null and void, nonest and a nullity in the eyes of laws and were

without consideration. It was further the case set up that he was still in actual physical possession of the suit land as *bhondedar*. Defendant-respondent Nos.1 to 3 herein appeared and contested the suit by filing their written statement and a counter-claim to the effect that they were owners in possession of the suit land and that plaintiff-respondent No.4 herein and his mother Smt. Bharto through their General Power Attorney holder - Chhailu Ram - sold all their rights, title and interest in the suit land to defendant-respondent Nos.1 to 3 for a valuable sale consideration. The suit as well as the counter-claim were dismissed vide the judgment and decree dated 03.01.2015. Ram Kanwar, plaintiff-respondent No.4 herein, chose not to prefer an appeal challenging the said judgment and decree dated 03.01.2015 passed by the Trial Court. The counter-claimants (respondent Nos.1 to 3 herein) filed an appeal challenging the judgment and decree dated 03.01.2015 dismissing their counter-claim. In the said appeal, the respondents were proceeded against *ex parte*. During the pendency of the appeal, an application was filed by the petitioners herein under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 for impleading them as respondents on the ground that they had purchased the property in dispute on 02.07.2014 for a valuable sale consideration and they were *bonafide* purchasers. The said application was contested by the respondents herein. Vide the impugned order the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the petitioners would contend that the

petitioners want to be impleaded as a party so as to defend their rights since they are subsequent purchasers. It is further the contention of the learned counsel that the petitioners do not wish to get a *de novo* trial done and do not want to file any fresh pleadings or to lead any fresh evidence. In support of his contention he has relied upon the judgments of the Hon'ble the Supreme Court in the cases of **Savitri Devi Vs. District Judge, Gorakpur & Ors. [1999 (2) SCC 577]**; **B. Fathima Beevi & Anr. Vs. Sornammal @ Sornam (Dead) Th. LRs & Ors. [2019 DNJ 65]**; **Robin Ramjibhai Patel Vs. Anandibai Rama @ Rajaram Pawar & Ors. [2018 (15) SCC 614]** and the judgments of this Court in the cases of **Teja Singh Vs. Pritam Singh & Ors. [2016 (3) RCR (Civil) 912]** and **Satish Kumar & Anr. Vs. Anup Singh & Ors. [2015 (2) RCR (Civil) 967]**.

4. *Per contra* the learned counsel for defendant-respondent Nos.1 to 3 has contended that Ram Kanwar, who was the plaintiff, chose not to file an appeal challenging the judgment and decree dated 03.01.2015 dismissing his suit. In the appeal preferred by defendant-respondent Nos.1 to 3 he chose not to appear and hence the petitioners who are claiming a right to the property through Ram Kanwar would have no right to be impleaded as a party. In support of his contention he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Prahlad Pradhan & Ors. Vs. Sonu Kumhar & Ors. [(2019) 10 SCC 259]** and the judgment of this Court in the case of **Gurminder Kaur Vs. Mohinder Pal Singh & Ors. [2020 (1) RCR (Civil) 1]**.

5. I have heard the learned counsel for the parties.

6. In the present case no doubt the sale in favour of the petitioners is during the pendency of the proceedings i.e. on 02.07.2014 and would be hit by the principles of *lis pendens*, however, since the respondents are not appearing in the appeal and have been proceeded against *ex parte*, the petitioners would have a right to be impleaded as a party only to defend the appeal by stepping into the shoes of Ram Kanwar. The petitioners would have no right to file any fresh pleadings or to lead any fresh evidence. However, denying them a right to be impleaded as a party would mean that their interest goes undefended and the same would cause prejudice to their rights. The judgment relied upon by the learned counsel for the defendant-respondent Nos.1 to 3 in the case of **Gurminder Kaur** (supra) is distinguishable on facts inasmuch as the defendants were represented in the case referred to by the learned counsel for the respondents, however, in the present case in the appeal the respondents have been proceeded against *ex parte*. Only in order to let the petitioners watch their interest and to defend the appeal on the basis of the pleadings and the evidence already on the record, the application ought to have been allowed.

7. In view of the above, the impugned order dated 28.05.2018 is set aside. The application is allowed and the petitioners are impleaded as parties in the appeal. It is, however, made clear that the petitioners would not be permitted to file any fresh pleadings or to lead any evidence.

8. Disposed off accordingly. Pending applications, if any, also stand disposed off.

06.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO