

**(2007) 07 P&H CK 0062**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Smt. Gomti and Others

APPELLANT

Vs

Purshotam and Others

RESPONDENT

**Date of Decision:** July 23, 2007

**Acts Referred:**

- Transfer of Property Act, 1882 - Section 54

**Citation:** (2007) 4 CivCC 742 : (2008) 149 PLR 164 : (2007) 4 RCR(Civil) 560

**Hon'ble Judges:** Vinod K.Sharma, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

Vinod K. Sharma, J.

The present appeal has been filed against the order passed by the Additional District Judge, Hisar, vide which the appeal filed by the applicant-respondents against the order passed by the learned trial Court dismissing his application under Order 21 Rule 10 C.P.C. has been allowed.

2. The applicant-respondents moved an application under Order 21 Rule 10 C.P.C. for being substituted in place of defendant-Geeta in view of the purchase of the property vide registered sale deed No. 476 dated 4.1.2001. The learned trial Court dismissed the application by observing as follows:

After going through the authorities of law relied upon by Ld. Counsel for both the parties and after considering the rival contentions, it is amply clear that undisputedly under Order 22 Rule 10 C.P.C. in case of devolution of any interest during the pendency of the 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 developed. But in the present case, the plaintiffs have filed the suit for declaration against defendants Smt. Geeta and others with the allegations that, the alleged will dated 24.7.1996 and the affidavit regarding the marriage of defendant Geeta dated 24.7.1996 with Mam

Raj s/o Chandrup deceased are the result of fraud and misrepresentation and Smt. Geeta, defendant is the legally wedded wife of Jagat Singh s/o Sardara and as such she has No. right and interest in the disputed property. There is no dispute that the applicant has alleged to have purchased the disputed property by the defendant Geeta to the applicant is hit by the principle of *lis pendens* as provided u/s 54 of the Transfer of Property Act. The allegations of fraud and misrepresentation against the defendant Geeta could not be substituted against the applicant regarding the execution of will and marriage with deceased owner of the disputed property, therefore, merely because the applicant has acquired interest in the property which is the subject matter of the suit, he could not be ordered to be substituted in place of defendant Geeta because it is the defendant Geeta herself who is to defend herself against the allegations of fraud and misrepresentation levelled against her by the plaintiffs notwithstanding the fact that the outcome of the suit may directly affect the right of the applicant which were acquired by him during the pendency of the suit. Unreasonable and unexplained delay in filing the present application in the present suit, which is pending since 16.12.2000 speaks volumes of the intention of the applicant who has alleged that he came to know about the pendency of the suit only one day prior to the filing of the present application through defendant No. 4 Jagmender Singh which could hardly be swallowed except with a pinch of salt, particularly, when the plaintiffs have already concluded their evidence and the case was fixed for the evidence of defendants. Therefore, applicant could not derive any benefit from Rikhu Dev Chela Bawa Harjug Dass case (*supra*), Sh. Saila Bala Dassi case (*supra*), Ram Sarup case (*supra*), Balbir Singh case (*supra*), Inderjit Singh case (*supra*) R.K.S. Builder case (*supra*), Arjan Singh and others case (*supra*), Naresh Kumar and others case (*supra*) relied upon by his Id. Counsel. While the case of the plaintiff-respondents finds support from Surjit Singh case (*supra*) Mahboob Sahad case (*supra*), Samarendera Nath Sinha and another case (*supra*), Tilak Raj Mahajan and sons case (*supra*), Des Raj case (*supra*) Bijay Singh case (*supra*), Shri Kuldeep Singh case (*supra*), Jagir Singh case (*supra*), Jagwant Singh and others case (*supra*) Ram Niwas case (*Supra*), S.P. Changalvaraya Naidu case (*supra*), Minakshi Saini and others case (*supra*), Ram Singh case (*supra*), Pushpa Rani case (*supra*), R.L. Plastics case (*supra*), Shahdeo Bus Singh and others case (*supra*) relied upon by their Ld. Counsel.

3. In appeal, the learned/Appellate Court by relying upon the judgment of the Hon"ble Supreme Court in the case of Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr. 2005 (2) R.C.R. 651 : 2005 (2) S.L.J. 908 accepted the application and allowed the applicant-respondent to proceed with the case from the stage where the application for substitution was made.

4. Learned Counsel for the appellants vehemently contended that the learned lower Appellate Court was in error while placing reliance upon the judgment of Hon"ble Supreme Court in the case of Amit Kumar Shaw v. Farida Khatoon (*supra*) as the same was not applicable to the facts of the present case. The contention of learned

Counsel for the appellant is that by way of order dated 4.1.2001, a restraint order was passed against defendant No. 1 from alienating the property in dispute. It may be mentioned here that the suit was filed by the appellants on 16.12.2000 whereas (wherein?) defendant Nos. 1 and 2 had appeared and thus, they were aware of the pendency of the suit as well as application for injunction. Inspite of stay order, the sale deed has been executed and therefore, the contention of the learned Counsel for the appellant is that in view of the law laid down by the Hon"ble Supreme Court in the case of Surjit Singh v. Harbans Singh 1995 (3) R.R.R. 560 : 1996 (3) L.J.R. 818 (S.C.) the application moved by the applicant-respondents under Order 21 Rule 10 C.P.C. could not have been allowed. The contention of the learned Counsel for the appellants is that alienation in violation of restraint order cannot give a right to the party to contest the suit as the alienation/assignment would be illegal.

5. Learned Counsel for the applicant-respondents has further contested the plea on the ground that the injunction order was granted at 2 p.m. whereas the sale deed was executed in favour of the applicant-respondents at 9.30 a.m. i.e. prior to the passing of the injunction order and therefore, the impugned order cannot be interfered with. I find force in the contention raised by the learned Counsel for the appellants. It is not in dispute that the suit was filed by the appellants on 16.12.2000 in which defendant No. 1 i.e. vendor of the applicant-respondents was a party and was duly served in the application for injunction. In view of this, the transfer cannot be said to be bonafide and was clearly a mala fide attempt on the part of defendant Nos. 1 and 2 to defeat the right of the applicant-respondents herein.

6. Consequently, the learned trial Court was right in dismissing the application. The order passed by the learned Lower Appellate Court, therefore, cannot be sustained. Accordingly, this appeal is accepted and the order passed by the Lower Appellate Court is set aside and that of the trial Court is restored.