

(2009) 09 P&H CK 0157

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1466 of 2009 (O and M)

Joginder Singh

APPELLANT

Vs

Kashmir Singh and Others

RESPONDENT

Date of Decision: Sept. 2, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, 151

Citation: (2009) 4 CivCC 392 : (2009) 4 RCR(Civil) 735

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: M.S. Dhami, for the Appellant; Bhupeshwar Jaswal, for the Respondent No. 1, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

This revision petition is directed against the order dated 6th of January, 2009 passed by Civil Judge (Senior Division) Dasuya, District Hoshiarpur dismissing the application of the petitioner-Joginder Singh and proforma respondents Natha Singh and Baldev Singh under Order 1 Rule 10 read with Section 151 CPC for impleading them as defendants in the suit for possession of the land measuring 40 (canals by way of specific performance of an agreement and in the alternative suit for recovery of Rs. 1,70,000/-.

2. In the application under Order 1 Rule 10 CPC, it was averred that since the petitioner and proforma respondents (herein after referred as applicants) purchased the suit property from the defendants vide sale deed dated 10.05.2006. As such they are bona fide purchasers for valuable consideration without notice. The decision of the suit would directly affect, their rights, therefore, they are necessary parties.

3. Reply to the application was filed, wherein it was pleaded that the alleged sale deed being executed during the pendency of the suit would suffer from principles of lis pendens, therefore, the applicants being the subsequent vendees, during the pendency of the suit, step into the shoes of the owner, therefore, they are neither necessary nor proper parties to the suit for specific performance.

Heard.

4. It may be observed that the agreement to sell on the basis of which the suit was filed by the plaintiff is dated 01.12.2004. Suit was filed on 12.01.2006. The sale was effected during the pendency of the suit on 10.05.2006 and the application was tiled after the plaintiff had closed the evidence and it was fixed for defence evidence. Therefore, now, at this stage it would be futile to implead the applicants as defendants. Even otherwise, the subsequent purchasers having stepped into the shoes of the owner, would remain bound by the decree passed against him and they are neither proper nor necessary parties. I find support to my these observations from the judgment delivered in case Lachhami Devi v. Pala Singh 1996 (1) RRR 678, wherein it was observed as under:-

It is not a case of assignment but it is a case of purchase during the pendency of the suit. According to the bowing of the appellant, agreement to sell dated 09.08.1989 and sale deed dated 05.10.1989 on the basis of which she is alleged to have purchased the suit land from Pala Singh, are during the pendency of the suit. Thus, she being subsequent purchaser, is neither a proper nor a necessary party to a suit for specific performance. Subsequent purchaser gets no right to get himself impleaded as a party inasmuch as he would be bound by the decree in suit in view of the principle contained in Section 52 of the Transfer of Property Act. The right of the plaintiff to purchase the property in pursuance to the agreement to sell executed in his favour was specifically in question and therefore, the defendant had no right to transfer or otherwise deal with the property affecting rights of the plaintiff. The agreement or sale, if any, made during the pendency of the suit, shall afford no ground to the subsequent purchaser to get himself impleaded as a party to the suit at the stage of appeal.

5. As a matter of fact impleadment of party defendant, who is a subsequent vendee has been discouraged by the Courts for the reasons; firstly, he had no respect or regard to the Court, which was already seized of the lis and hereby showing strength has played with the lis and tried to this in the course of law; secondly; he acted against the fundamental principles of law that any transaction entered into by the party to the suit would be void; thirdly, the equity does not favour him; fourthly; subsequent vendee steps into the shoes of the original vendor and lastly, if the property changes hands several times during the pendency of suit, then there will be no end to such applications and the adjudication of the lis shall be delayed.

6. Though, the Apex Court approved for impleadment of the transferee pendente lite, but it left to the Court if such transferee is required to be impleaded or not. It was observed in case *Bibi Zubaida Khatoon v. Nabi Hassan Saheb & Anr.*, 2005 (1) CCC 323 (S.C.) : 2004 (1) RCR (Civil) 216 as under:-

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9. It is not disputed that the present petitioner purchased the property during pendency of the suit without seeking leave of the court as required by Section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the court cannot, as of right, seek impleadment as a party in the suits which are long/pending since 1983. It is true that when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined as party to enable him to protect his interest. But in instant case, the trial court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action of the alienation does not appear to be bona fide. The trial court saw an attempt on the part of the petitioner to complicate and delay the pending suits.

10. The decisions cited and relied on behalf of the appellant turned on the facts of each of those cases. They are distinguishable. 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 decision relied on behalf of the contesting respondents of this court in the case of *Savinder Singh (supra)* fully supports them in their contentions. After quoting section 52 of the Transfer of Property Act, the relevant observations are thus:-

Section 52 of the Transfer of Property Act envisages that:-

"During the pendency in any court having authority within the limits of India.....of any suit or y proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of *lis pendens* by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.

11. In case of Dhurandhar Prasad Singh (supra), observations relevant for the purpose of these appeals read thus:-

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, on he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary. 12. The above statement of law by this Court in the cases (supra) clearly shows that the trial court has rightly exercised its discretion in rejecting the three applications for impleadment of the transferee pendente lite as party to the suits and for amendment of the pleadings. The High Court was also justified in refusing to interfere with the order of the trial court. Consequently, there is absolutely no merit in any of these appeals. They are, accordingly, dismissed with costs to be borne by the petitioner of the contesting respondents.

7. Thus, in view the intent of the law laid down for not impleading the subsequent vendee as party defendant. The applicants having subsequent vendees are neither necessary nor proper parties.

8. I find no merit in this revision petition and the same is dismissed.