

**(2010) 11 P&H CK 0646**

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

**Case No:** C.R. No. 6452 of 2009

Lakhwinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Nov. 30, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 10

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Alok Singh, J.

Plaintiff-Petitioner has invoked supervisory jurisdiction of this Court assailing the order dated 15.10.2008 passed by learned Civil Judge (Jr. Divn.) Amritsar as well as order dated 23.1.2009 passed by learned Addl. District Judge, Amritsar whereby application moved by the Plaintiff seeking ad interim injunction restraining Defendants No. 1 to 4 not to interfere in the possession of the Plaintiff over the suit land was dismissed.

2. The brief facts of the present case are that Plaintiff-Petitioner has filed suit for declaration to the effect that Plaintiff is the exclusive legal and lawful owner in possession of the suit property with the pleadings inter alia that Plaintiff has purchased suit land from C.R. No. 6452 of 2009 Defendant/Respondent No. 5 vide sale deed dated 28.9.2006 and mutation pursuant to the sale deed was effected in favour of the Plaintiff. An application seeking ad interim injunction restraining Defendant not to interfere in the possession of the Plaintiff over the suit land was also moved alongwith the plaint.

3. Defendants No. 1 to 4 have filed their reply to the ad interim injunction application as well as written statement contending therein that Defendant No. 5 has also filed one suit for declaration against the contesting Defendant which was

dismissed vide judgment dated 18.10.2006. It has further been contended that during the pendency of the suit filed by Defendant No. 5, Plaintiff-Petitioner has purchased the suit land vide sale deed dated 28.9.2006, hence, sale deed executed by Defendant No. 5 during the pendency of the suit is hit by principle of lis pendence. It has further been contended by the contesting Defendant that Plaintiff is neither owner nor in possession of the suit property. It was further contended that Defendant No. 5 was Govt. Contractor and after dismissal of his suit on 18.10.2006 possession has already been taken from Defendant No. 5 and now State Government is in possession of the property in dispute. It further contended that mutation in favour of the Plaintiff pursuant to sale deed 28.9.2006 has already been recalled.

4. Both the Courts below vide impugned judgments have rejected the application moved by the Plaintiff-Petitioner.

5. I have heard learned Counsel for the parties and perused the record.

6. To issue ad interim injunction during the pendency of the case, Court has to find out prima facie case, balance of convenience C.R. No. 6452 of 2009 and irreparable injury in favour of the Plaintiff. If any of the three ingredients sine qua non to issue ad interim injunction is missing ordinarily ad interim injunction should not be issued in favour of the Plaintiff.

7. Undisputedly Defendant No. 5 had earlier filed suit for declaration against Defendants No. 1 to 4/State Government which was ultimately dismissed vide judgment dated 18.10.2006. Undisputedly during the pendency of the case filed by Defendant No. 5, Plaintiff-Petitioner alleges to have purchased the property vide sale deed dated 28.9.2006. In view of the settled position of law that any alienation made during the pendency of the suit by any party of the suit shall be hit by principles of lis pendence, sale deed in favour of the Plaintiff-Petitioner by the Defendant No. 5 during the pendency of suit filed earlier by the Defendant No. 5 is certainly hit by principle of lis pendence.

8. Not only this if any alienation is made during the pendency of the suit the purchaser therefrom shall be bound by the decree passed in favour or against the vendor in view of provisions of Order 22 Rule 10 Code of Civil Procedure. Since Plaintiff-Petitioner did not opt to seek leave of Court under Rule 10 Order 22 CPC to proceed with the case on behalf of Defendant No. 5 (Plaintiff therein), hence, now Plaintiff-Petitioner has absolutely no right to file fresh suit taking all the pleas which were taken by Defendant No. 5 in his suit. Present suit is apparently barred by principles of res judicata in view of the fact that vendor - Defendant No. 5 who was Plaintiff in the earlier suit has lost his suit now vendee from the Defendant No. 5 has absolutely no right to file fresh suit on the same allegations.

9. Since suit of the present Plaintiff-Petitioner seems to be barred by principle of res judicata and in view of the fact that sale deed by Defendant No. 5 in favour of the

Plaintiff is hit by principles of list pendency, I do not find any prima facie case in favour of the Plaintiff. Since there is no prima facie case in favour of the Plaintiff, hence, Plaintiff is not entitled for any ad interim injunction.

10. Petition is devoid of merit, hence, is dismissed.