



Rajesh Kapoor v. Sukhdev Singh and another (P&H)

[\(2022\) Law Today Live Doc. Id. 17001](#)

PUNJAB AND HARYANA HIGH COURT

Before: Manoj Bajaj, J.

CR-2106-2022 (O&M)

Decided on: 27.07.2022

Rajesh Kapoor

Petitioner

Versus

Sukhdev Singh and another

Respondents

Present:

Mr. Kiran Kumar Madan, Advocate for the petitioner.

Mr. Anil Kumar, Advocate for the respondents.

Transfer of Property Act, 1882 (4 of 1882), Section 52 -- Code of Civil Procedure, 1908 (V of 1908), Order 1 Rule 10, Order 6 Rule 17 – Suit for specific performance – Subsequent purchaser as party-defendant – Amendment of plaint -- Doctrine of lis pendens – Effect of -- No doubt, by rule of lis pendens, subsequent purchaser is bound by the decree but at the same time, it cannot be said that the presence of the purchaser in the suit proceedings would be improper also – By amendment plaintiff only seeks to introduce the subsequent events relating to the alienation of the suit property -- Application filed by the petitioner/plaintiff under Order 6 Rule 17 CPC read with Order 1 Rule 10 CPC allowed.

(Para 7, 8)

MANOJ BAJAJ, J. (ORAL) –

1. Rajesh Kapoor-plaintiff is aggrieved against the decision dated 19.04.2022 passed by Civil Judge (Jr. Divn.), Jalandhar in a Civil Suit No.CS/1545/2016, whereby his application seeking amendment of the plaint and addition of Smt. Balwinder Kaur (wife of Raj Kumar/defendant No.2) as defendant No.3, was dismissed.

2. Briefly, the facts of the case are that the plaintiff filed a suit against defendants Sukhdev Singh and Raj Kumar both sons of late Gurbachan Singh for specific performance of agreement to sell dated 10.08.2015 and subsequent agreements dated 11.01.2016 and 30.04.2016, whereby time for performance of the original agreement was extended. The defendants had agreed to sell their property measuring 2 marlas comprising of shop at ground floor and residential portion at first floor and second floor in favour of the plaintiff for a total sale consideration of Rs.15 lacs. The plaintiff was throughout ready and willing to perform his part of the contract along with the demand drafts towards payment of sale consideration to the defendants, but the defendants delayed the same on one pretext or the other. The plaintiff came to learn that the defendants are making an attempt to alienate the suit property to third person, he filed a suit seeking specific performance of the contract and also sought injunction as a consequential relief.

3. The suit is being contested by filing the written statement, wherein various preliminary objections have been raised and on merits also, the averments contained in the plaint were denied and it is pleaded that the plaintiff was never ready and willing to perform his part of the contract. In the end, it was prayed that the suit be dismissed.

4. During the pendency of the suit, plaintiff moved an application under Order VI Rule 17 CPC read with Order I Rule 10 CPC seeking amendment of the plaint and addition of Balwinder Kaur w/o Raj Kumar as defendant No.3, because the suit property



stood transferred in her name by virtue of document No.3599 dated 27.06.2019. The said application was contested by the defendants by filing their reply, and the Civil Judge (Jr. Divn.), Jalandhar vide impugned order dated 19.04.2022, dismissed the application.

5. Learned counsel for the petitioner has argued that once the factum of transfer of property in question is noticed by the Civil Judge (Jr. Divn.), Jalandhar, therefore, there was no occasion to dismiss the application of the plaintiff seeking impleadment of subsequent purchaser, as well as incorporating the necessary averments in the plaint. According to him, the transfer of the property by defendants in favour of Balwinder Kaur w/o Raj Kumar (defendant No.2) is aimed to defeat the plaintiff's claim, therefore, the observation of the trial Court that she is not a necessary party to be impleaded as defendant No.3 is erroneous. He has further argued that the application for impleadment of Balwinder Kaur was sought pursuant to the prayer for amendment of plaint, but that material aspect has not at all been touched by the trial Court and it summarily proceeded to dismiss both the prayers. He prays that the impugned order dated 19.04.2022 be set aside and his application be accepted.

6. On the other hand, learned counsel for the respondents has argued that it is the case of the plaintiff himself that the property has been sold during the pendency of the suit, therefore, by virtue of the doctrine of *lis pendens* contemplated under Section 52 Transfer of Property Act, 1882, it is not necessary to implead Balwinder Kaur as defendant No.3, because her vendor is already contesting the suit. He submits that the trial Court has given justifiable reasons for dismissing the application. He prays that the petition be dismissed.

7. After hearing the learned counsel for the parties, considering the facts and subsequent events, this Court finds that the suit property, which is the subject matter of the agreement to sell has been transferred in favour of a third party and it is apparent that the interest of a third party is also involved in the decision of the suit. No doubt, by rule of *lis pendens*, subsequent purchaser is bound by the decree, who steps into the shoes of the vendor, and may not be a necessary party for adjudication of the dispute between the plaintiff and the original defendants, but at the same time, it cannot be said that the presence of the purchaser in the suit proceedings would be improper also. Thus, the observations made in the impugned order by Civil Judge (Jr. Divn.), Jalandhar are not in accordance with law, particularly when it also dismissed plaintiff's prayer for amendment of the plaint, who only seeks to introduce the subsequent events relating to the alienation of the suit property, and the same is just and necessary for adjudication of the dispute.

8. Resultantly, this Court has no hesitation in holding that the impugned order suffers from illegality and impropriety, and is set aside, and the application filed by the petitioner/plaintiff under Order VI Rule 17 CPC read with Order I Rule 10 CPC is allowed.

9. Revision petition is allowed.

Petition allowed.
