



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 17887/2019

Yogesh Goyanka

-----Petitioner

Versus

1. Govind S/o Shri Kailash, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
2. Sachin S/o Shri Kailash, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
3. Asha D/o Shri Kailash, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
4. Poonam D/o Shri Kailash, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
5. Kamlesh D/o Shri Nathwa, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
6. Sharda D/o Shri Nathwa, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
7. Rajkumar S/o Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
8. Madhu D/o Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
9. Shakuntla D/o Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
10. Vishnu S/o Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
11. Sunita D/o Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
12. Meera D/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
13. Aarti D/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
14. Ravi S/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
15. Nisha D/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.



16. Pooja D/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
17. Vikram S/o Shri Niranjana, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
18. Niranjana S/o Shri Nathua, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
19. Kailash S/o Shri Nathua, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
20. Laxmi W/o Late Shri Harishankar, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
21. Rajani Upadhaya W/o Of Shivkumar, Resident Of Higher Agency, Firozabad Road, Nh-2, Tondala Uttar Pradesh
22. Sub Registrar Hindaun City, Tehsil Hindaun, District Karauli.
23. Tehsildar, Tehsil Hindaun, District Karauli.
24. Om Prakash Agarwal S/o Shiv Bhagwan, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
25. Yogesh Gupta S/o Shri Laxmichand, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
26. Sachin Goyal S/o Shri Rajendra Goyal, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
27. Satish Kumar S/o Shri Totaram, By Caste Dhakad, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.
28. Smt. Manju W/o Shri Mahesh Chand, Resident Of Hindaun City, Tehsil Hindaun, District Karauli.

-----Respondents

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For Petitioner(s)	: Mr. Rakesh Kumar through VC
For Respondent(s)	: Mr. Prahlad Sharma through VC Mr. Sudhanshu Joshi through VC Mr. RK Mathur, Sr. counsel with Mr. Aditya Kiran Mathur through VC Mr. Akshay Sharma, AGC through VC Mr. Hari Krishna Sharma through VC

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**HON'BLE MR. JUSTICE SAMEER JAIN**  
**Judgment / Order**

**Reportable**

**Reserved on 07/01/2022**

**Pronounced on 21/01/2022**

1. Instant writ petition under Article 227 of the Constitution of India has been filed against the impugned order dated 10/10/2019 passed by the learned Additional District Judge No.1, Hindaun City (Karauli) Rajasthan whereby the application filed by the petitioner and other applicants for impleadment under Order 1 Rule 10 CPC has been dismissed.

2. The facts of the case as averred by the petitioner are that the petitioner alongwith performa-respondents purchased a land in Hindaun Town vide registered sale deed dated 28/09/2018 from one smt. Rajani Upadhaya, resident of 1/16, Janakpuri Tundala Road, District Firozabad (U.P.). The aforesaid land was in the name of Smt. Rajani Upadhaya as per the revenue records and she was having possession over the land and possession of the same was peacefully handed over to the petitioner and the performa respondents at the time of execution of sale deeds.

3. It is case of the petitioner that he was never informed about pendency of suit for cancellation of sale deed which was executed in favour of Smt. Rajani Upadhaya vide registered sale deeds dated 31/01/2007 and 26/04/2007. As stated by the petitioner, when he purchased the land on 28/09/2018, there was no stay operational and no injunction operating against transfer of the said land and therefore, while the title was legally searched, no information regarding any kind of legal hurdle was found. It was only on 13/02/2019 that the petitioner came to know regarding interim order and the matter being sub-judice before the learned trial court and immediately he filed an application under Order 1



Rule 10 CPC for impleadment being a bonafide purchaser. The said application was duly replied by the opposite side and after consideration of the same, vide order impugned dated 10/10/2019, the application for impleadment was rejected. Hence, the present writ petition.

4. Mr. Rakesh Kumar, learned counsel for the petitioner submitted that the petitioner is a bonafide purchaser as the sale deed was executed after payment of appropriate stamp duty and getting the same registered. Thereafter, in the revenue records, appropriate entry of amendment in his name is duly recorded as a Khatedar. The respondent no.4, who has sold the said property under the sale deed dated 28/09/2018, is living in U.P. and is not taking any interest in the litigation and therefore, in the interest of justice, as per Order 1 Rule 10 CPC and as per his application, his application for impleadment should be allowed. In support of his claim, he has relied upon one judgment of the Hon'ble Apex Court reported in **2013(5) SCC 397** titled as **Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited & Ors.**, more specifically Para 55 which reads as under:-

*"55. We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In Khemchand Shanker Choudhary v. Vishnu Hari Patil (1983) 1 SCC 18, this Court held that*

*"6.....the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party*





*who dies during the pendency of a suit or a proceeding."*

*Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:*



6...Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names



may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out."

(Emphasis supplied)

5. Per-contra, Mr. RK Mathur, Sr. Advocate assisted by Mr. Aditya Kiran Mathur; Mr. Prahlad Sharma and the other learned counsels, representing the opposite side, have vehemently opposed the impleadment application and have prayed that the impugned order dated 10/10/2019 is just, legal, proper, well reasoned and should be sustained. In support of the said claim, it is submitted that in the light of Section 52 of the Transfer of Property Act, it is well settled law that it is necessary for administration of justice that decision of a Court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. He emphasized on the doctrine of *lis pendens*. As per him, on perusal of Section 52 of the Transfer of Property Act and in the light of the Apex Court Judge in **Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb & Anr.** reported in **(2004) 1 SCC 191**, transferee cannot, as of right, seek impleadment in the suit when the suit is long pending and the alienation prima facie did not appear to be bonafide. Any transferee *pendente lite* without leave of the Court in the light of Section 52 is a nullity, illegal and void. In this regard, they relied upon following paras of the said judgment which read as under:-

*"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 :-

"6. Section 52 of the Transfer of Property Act envisages that :-

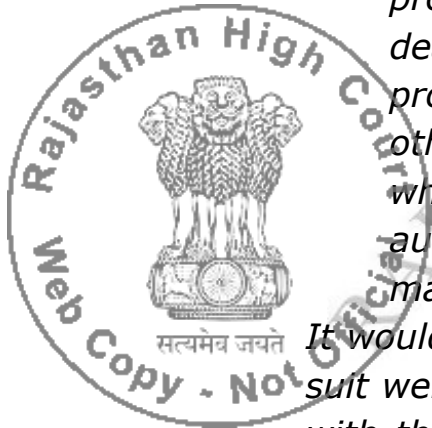
'During the pendency in any court having authority within the limits of India ..... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit 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, yet 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."*

6. Learned Senior Counsel Mr. Mathur has also relied upon the sale deed executed by the petitioner dated 28/09/2018 whereby at Page 27 of the paper-book under Section 39 on the sale deed, the Sub-Registrar, Hindaun City has specifically made a noting which is reproduced as under:-

**“नोट अन्तर्गत धारा 39 :-** उक्त दस्तावेज में वर्णित खसरा नम्बरान पर एक प्रकरण श्रीमान एसडीएम हिण्डौन सिटी व एक प्रकरण माननीय एडीजे प्रथम हिण्डौन सिटी में विचाराधीन है।”

The said noting as per learned Senior Counsel Mr. Mathur, goes to show that respondent no.4-Smt. Rajani Upadhaya and the petitioner were fully aware of the fact on 28/09/2018 that the subject property of the sale deed is in dispute and, therefore, their claim that for the first time on 01/02/2019 they came to know of the same, is an afterthought and created story and they are not bonafide purchasers.

8. Learned Senior Counsel Mr. Mathur has also submitted that the present *lis* in question does not require the petitioner to be impleaded as a necessary party as the suit for cancellation and permanent injunction against respondent no.4 and the parties was pertaining to sale of property by the custodian of a minor Mr. Vishnu which was null and void.

9. Mr. Prahlad Sharma, learned counsel appearing for the contesting parties has further submitted that only one of the applicants out of six has approached this Court by present writ petition and they have concealed the fact that one FIR No.153/2018 has been filed against the impleading applicants





prior to the date of execution of the sale deed i.e. on 22/02/2018. Mr. Prahlad Singh also relied upon judgments of the Hon'ble Apex Court rendered in **Sarvinder Singh Vs. Dalip Singh & Ors.: (1996) 5 SCC 539** and in **Gurmit Singh Bhatia Vs. Kiran Kant Robinson & Ors.: (2020) 13 SCC 773** wherein relying upon provisions of Section 52, impleadment of subsequent purchaser was denied by the Hon'ble Apex Court.

10. On perusal of the contentions raised by learned counsels for the parties, scanning records of the writ petition and carefully considering the judgments cited at bar, this Court is of the view that in the present matter, the provisions of Section 52 of the Transfer of Property Act have a direct application. The sale deed dated 28/09/2018 executed between Smt. Rajani Upadhaya and the petitioner, categorically reflects noting of the Sub-Registrar that on the subject property, a dispute is pending before ADJ (First), Hindaun City under the provisions of Section 39. Therefore, the claim of the petitioner that it was on 01/02/2019 that for the first time, he was aware about any pendency of the litigation and stay order, is not tenable. It is also an admitted fact on record that respondent no.4 in the sub-judiced matter has marked his presence on 11/01/2018 and still the fact of subject property being in dispute and sub-judice was not reflected in the sale deed. The provisions of Section 52 of the Transfer of Property Act and the judgments cited at bar by learned counsel for the respondents, in loud voice, have held that alienation having been made in favour of any party during pendency of the suit, was hit by doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 and hence, the said transaction is nullity, illegal and void and the Hon'ble Apex Court has further held that in the



said situation, the application filed by the subsequent purchaser for impleading as necessary and proper party is not tenable.

11. The claim of the petitioner that he is a bonafide purchaser and recorded Khatedar and the sale deed is registered and was in knowledge of the matter being sub-judiced on 01/02/2019 for the first time gets frustrated and nullified on perusal of the fact that on 28/09/2018 on the face of sale deed under Section 39, a note of pendency of the dispute on the subject matter of property was reflected. The respondent no.4-Smt. Rajani Upadhaya was very well served in the Civil Suit on 11/01/2018. The judgment relied upon by learned counsel for the petitioner in **Thomson Press (India) Limited (supra)** is also not applicable in the facts of the case as firstly, the same was pertaining to Specific Relief Act, 1963 and secondly, the facts of the case, as referred above, were on different pedestal and thirdly, the petitioner herein is not a bonafide purchaser and FIR has been lodged against him. Therefore, he was aware of the matter being sub-judice alongwith respondent no.4-Smt. Rajani Upadhaya who is actually defending the civil suit filed against her and is duly served.

12. In the light of the said discussions and perusal of the impugned order dated 10/10/2018, which is a speaking order, this Court is not inclined to interfere under Article 227 of the Constitution of India which can only be invoked when there is an error apparent on record, gross illegality has been committed by the learned Trial Court.

13. As a result, the present writ petition filed by the petitioner is dismissed. All pending applications stand disposed of.

(SAMEER JAIN),J

RAGHU/