
(2009) 05 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4895 of 2009

Surendra Singh	Vs	APPELLANT
Vishvanath and Others		RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Transfer of Property Act, 1882 — Section 52

Citation : (2010) 4 RLW 3065

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—This writ petition has been filed by the petitioner for quashing order dated 21.8.2007, Annex. 5 passed by the learned District Judge. Fast Track No. 4 (MACT Cases), Jodhpur, whereby, the application filed by the petitioner under Order 1 Rule 10, CPC was rejected.

2. According to the facts of the case, a suit was filed by plaintiff-respondent No. 3 Smt. Rachna Gehlot against respondents (herein) Vishvanath and Hukam Singh. The said suit was filed for taking possession and compensation. In the suit, an application under Order 1 Rule 10, CPC. was filed by the petitioner narrating that he has purchased the property in question on 23.7.2006 and he is in possession, therefore, he is necessary party in the matter and accordingly he may be impleaded as party to the proceedings of the suit. The said application filed by the petitioner was replied by the plaintiff-respondent Smt. Rachana Gehlot and it was prayed that the suit was instituted on 15.7.2006 and property in question was purchased by the applicant on 23.7.2006; meaning thereby, during the pendency of the suit, the property in question was purchased, therefore, the alleged transfer of the property in question is barred by Section 52 of the Transfer of Property Act. Therefore, the subsequent purchaser who has allegedly purchased the property after institution of the suit is not necessary

party.

3. After filing of the reply, as aforesaid by the plaintiff-respondent, the trial Court rejected the application under Order 1 Rule 10, CPC vide order dated 21.8.2007, in which, the learned trial Court has observed in para 5 of the order that admittedly the suit was instituted on 15.7.2006 and the applicant has purchased the property in question on 23.7.2006 from the respondents without any permission from the Court, therefore, on the basis of principle of lis pendent, the property was illegally transferred, therefore, while following the judgment reported in AIR 2007 SCW 1490, the learned trial Court rejected the application with cost of Rs. 200/-.

4. Learned Counsel for the petitioner argued that the petitioner was not having any knowledge of the pendency of the suit and he is bona fide purchaser of the property in question, therefore, he is necessary party in the suit and as such the learned trial Court has committed error while rejecting the application filed by the petitioner. It is further argued that admittedly the suit was filed on 15.7.2006 but notices were issued by the Court on 7.8.2006 to the defendants in the suit; and, before that he had purchased the property from the respondents, therefore, Section 52 of the Transfer of Property Act will not come in way of the rights of the petitioner to be impleaded as party.

5. In support of his contention, learned Counsel for the petitioner heavily relied upon the judgment of the Hon"ble Supreme Court in the case of Savitri Devi Vs. District Judge, Gorakhpur and Others,

6. I have considered the submission advanced by learned Counsel for the petitioner and also perused the record of the case.

7. First of all, in this case, language of Section 52 of the Transfer of Property Act, 1882 may be taken note of, Section 52 reads as under:

52. Transfer of property pending suit relating thereto.-During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings 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 any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration

of any period of limitation prescribed for the execution thereof by any law for the time being in force.

Upon perusal of Section 52 of the Act of 1882, it is abundantly clear that during the pendency of the suit or proceeding, the property cannot be alienated without the permission of the Court. Further, in the explanation, it is specifically stated that for the purpose of this section the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction; meaning thereby, when the suit was filed on 15.7.2006, thereafter, provision of Section 52 will apply in this matter. The trial Court has not committed any error while rejecting the application filed by the petitioner observing that as per Section 52 no property, being the subject matter of the suit, can be alienated or transferred after institution of the suit.

8. I have also considered the judgment cited by learned Counsel for the petitioner reported in Savitri Devi Vs. District Judge, Gorakhpur and Others, The facts of reported case are altogether different. In the said judgment, it is observed by the apex Court that Order 1 Rule 10, CPC enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in the question involved in the suit and avoidance of multiplicity of proceedings is also one of the objects of the said provision. Here, in the case on hand, the facts are entirely different and application of the reported judgment is not attracted in the present case. In this view of the matter, the learned trial Court has rightly rejected the application under Order 1 Rule 10, CPC. Therefore, there is no force in this writ petition.

9. This writ petition is, therefore, accordingly dismissed.