

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Civil First Appeal No. 534/2008

Sesaram

----Appellant

Versus

Bagdi And Ors

----Respondents

Connected With

S.B. Civil First Appeal No. 15/2009

Sesa Ram

----Appellant

Versus

Smt.bagdi Ram And Anr.

----Respondents

For Appellant(s)	:	Mr. Nishant Bapna
For Respondent(s)	:	Mr. Abhinav Jain Mr. Gopal Acharya

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

04/12/2024

1. The plaintiffs/respondents brought the suit for cancellation of registered adoption deed made in favour of the defendant/appellant. The suit was decreed by the learned trial Judge, hence, this first appeal by the defendant.
2. During pendency of this appeal, plaintiffs/respondents sold the suit property to one Phooli Devi W/o Shri Vaktaramji. Phooli Devi filed an application IA No. 1/2021 for impleadment in this appeal, however, she died, thereafter, her legal heirs, husband and children have filed IA No.1/2014 under Section 151 CPC for impleadment as party respondents.

3. Learned counsel for the appellant submits that prayer for impleadment is not permissible as the applicants are lis-pendens purchaser. Their purchase is hit by Section 52 of the Transfer of Property Act.

4. It is settled by a catena of judicial pronouncements that the provisions of Section 52 does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation. The doctrine stipulates that during pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such suit or proceeding.

Section 52 does not to render transfer affected during the pendency of a suit by a party to the suit void; but only renders such transfers subservient to the rights of the parties to such suit.

Reference may be made to **A. Nawab John Vs. V.N. Subramaniam reported in 2012 (7) SCC 738** and **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors Pvt. Ltd.; AIR 2013 SC 2389.**

5. Learned counsel for the appellant has relied upon the judgment of this Court in **Kuldeep Singh Rathore & Ors. Vs. Jalam Singh & Ors.** reportable **2016 (4) RLW 2965** for his submission that this court had refused to interfere with the order of the trial judge refusing prayer for impleadment under Order I Rule 10 CPC, by lis-pendens purchaser.

6. Evidently, the right of the purchaser would be subservient to the right of the vendor as per adjudication in the civil suit. If the

decision goes against the vendor of the lis-pendens purchaser, the lis-pendens purchaser would not get the property by virtue of the purchase only. However, since the transaction is not void ab-initio, there is no harm in impleading the lis-pendens purchaser in the appeal as they have entered into the shoes of their vendor and the vendor has lost interest in the lis after transfer.

7. The power of the Court under Order I Rule 10(2) CPC is discretionary one. The applicants are not strangers but have got some interest in the suit property by purchasing the litigation itself.

8. Hence, prayer for impleadment is allowed.

9. The newly added respondents would not have any right to file any pleading or lead any evidence.

10. Therefore, for substantial justice, the applicants may be brought on the record.

11. Application IA Nos.1/2021 and 1/2024 stand disposed of accordingly.

12. List these matters on 25.01.2025.

(BIRENDRA KUMAR),J