

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 736/2019

Jaidayal Singh S/o Shri Sagruram

----Appellant

Versus

Gyanchand @ Jijal S/o Shankar Lal

-----Respondent

For Appellant(s)	:	Mr. Bipin Gupta with Mr. Naman Pareek
For Respondent(s)	:	Mr. Shriram Yadav Mr. Jai Raj Tantia

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

16/02/2024

An application under Order 1 Rule 10 CPC (application no.1/2024) is filed on behalf of Subey Singh, Dayaram and Rajaram (since deceased) through legal heirs Smt. Krishna for impleading as respondents on the ground that the suit property was purchased through sale deed dated 18.12.2013 and 01.01.2014, much before filing of instant appeal.

Learned counsel for appellant has submitted that after purchase of aforesaid suit property relevant entries in revenue record has already been effected and as a result of which the applicants have a right to contest the present appeal as a necessary party required for adjudication of appeal. He also submits that the trial Court has dismissed the T.I. application and the applicants were not aware about the pendency of the civil suit, therefore, non mentioning of any clause about pendency of civil suit in the sale deeds have no bearing on the rights of the applicants.

Aforesaid contentions were opposed by learned counsel for appellant on the ground that a suit for specific performance was preferred against the respondents before the trial Court and the trial Court on 27.09.2013 while dismissing the temporary injunction (T.I.) application has directed the respondents to reflect the fact of pendency of civil suit in the registered sale deed. He also submitted that no such entries were recorded in the registered sale deed, therefore, the applicants are not bona fide purchasers.

Having considered the submissions of learned counsel for parties and also on perusal of record a fact is quite clear that a suit for specific performance was filed on 08.04.2013 for specific performance of agreement dated 13.01.2012 and during pendency of this civil suit a TI application no.16/2013 was decided on 27.09.2013 by the trial Court observing that in case of sale of the suit property, the pendency of suit shall be reflected (recorded) in the registered sale deed. The direction of the trial Court clearly indicate that in case of sale of property same shall be subject to outcome of the civil suit and purchaser must be beware about the pendency of dispute between the parties.

Herein, the copies of the registered instruments submitted by the applicants clearly indicate that no such fact was recorded. Further no explanation is offered for non-reflection of the fact of pendency of civil suit. The sale deed was executed without following directions of the trial Court and once any party to the civil proceedings violated a condition of order then the transaction cannot be termed as bona fide. Even no application was made

during pendency of civil suit and instant application is filed after a substantial delay.

Considering the totality of facts and circumstances, the conduct of the applicant cannot be termed as bona fide. A suit for specific performance was filed against executor of agreement then the necessary party for adjudication is executant (seller on date of agreement). The suit property changed hands during pendency of civil suit and subsequent purchaser is bound by the outcome of litigation in wake of Section 52 of the T.P. Act.

Hence, the application is devoid of merits and same is liable to be dismissed. Thus, the application under Order 1 Rule 10 CPC is hereby dismissed.

List on 21.03.2024.

(ASHOK KUMAR JAIN),J