

**Court No. - 44**

**Case :-** WRIT - B No. - 59267 of 2015

**Petitioner :-** Mohd. Haneef And 2 Others

**Respondent :-** Board Of Revenue Allahabad And 5 Others

**Counsel for Petitioner :-** Ram Niwas Singh, Vinay Kumar Singh Chandel

**Counsel for Respondent :-** C.S.C., Bansh Narain Pathak, Bashishth Narayan Upadhyay, Govind Krishna, I B Yadav, Kaushal Kumar Singh, Lallan Verma, N C Rajvanshi, N.C. Rajvanshi, Siddhartha Varma, Yashwant S., Yashwant Singh Subansha

**Hon'ble Rajiv Joshi, J.**

**Ref: Civil Misc. Impleadment Application No.100843 of 2016**

Heard Sri S. K. Varma, learned Senior Advocate assisted by Sri A.K. Gupta learned counsel for the applicant, Sri R.N. Singh, Advocate on behalf of the petitioner and Sri M.D. Singh Shekhar, learned Senior Advocate assisted by Sri Govind Krishann and Sri N.C. Rajvashi, learned Senior Advocate assisted by Sri Yashwant Singh, learned counsel for the respondents.

The present application has been filed for impleadment of the applicants three in number, as respondents in the writ petition. The application filed on the ground that the applicants are the necessary parties since agreement to sell in their favour has been executed by the concerned respondent.

The learned counsel for the petitioners and learned counsel for the respondent both have opposed the application on the ground that the applicants are not necessary party in the writ petition as before the Board of Revenue also, they (applicants) had filed an impleadment application which stood rejected vide order dated 9.9.2015. Since that order of the Board of Revenue remained unchallenged by the applicants and therefore, the present application is liable to be rejected.

It is contended by the learned counsel for the applicants that even if the applicants are not impleaded as parties in the petition, their interest should be protected as provided under Chapter 22 Rule 5-A of the Allahabad High Court Rules (for short 'the Rules').

I have considered the submission as raised by the learned

counsel for the applicants and learned counsel for the petitioners as well as learned counsel for the respondents and perused the application.

The present impleadment application has been filed on the basis of agreement to sell in favour of the applicants. It may be pointed out here that as per Section 54 of the Transfer of Property Act, the agreement to sell does not confer on the applicants any right over the property in dispute and said agreement even does not come within the definition of "Sale" as given in the said section.

Further, the application for impleadment filed by the applicants had already been rejected by the Board of Revenue and the said order was never challenged by the applicant.

Now coming to the submission of counsel for the applicants with regard to Rule 5-A of Chapter 22 of the Rules of the Court, it is stated that the provisions of Chapter 22 Rule 5 of the Rules do not relate to the impleadment of any party in the writ petition, but for lodging of caveat, whereas Rule 5-A deals with the hearing of persons not served with notice in terms of Rule 2 of Chapter 22 Rules of the Court, and specifically contemplates that if any person who desires to be heard and appears to the Court to be a proper person to be heard, may be heard. At this stage, it may also be pointed out that in regard to their grievance, the applicants have already instituted Original Suit No. 185 of 1992 which is still pending, as averred in paragraph Nos. 17 and 18 of the affidavit filed in support of the present application.

For the aforesaid reasons, the applicants do not appear to be proper persons to be heard in the present petition.

The application is totally misconceived and is accordingly rejected.

### **Order of Petition**

List after two weeks for admission.

Interim order, granted earlier shall be continue till the next date of listing.

**Order Date :- 3.5.2019**

Akbar