

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.36 of 2015.

Mst. Naseem Fatima

Vs.

Capital Development Authority through its Chairman & four (4) others.

Petitioner's by: Mr. Khurram M.Qureshi, Advocate.

**Respondents by: Mr. M. Nazire Jawad, Advocate for
Respondents No.1 to 3.**

Hafiz Ali Asghar, Advocate for respondent No.5

Date of Decision: 19.02.2015

Aamer Farooq, J.- In the instant civil revision, the petitioner has assailed order dated 06.01.2015 passed by Civil Court, Islamabad whereby application under Order 1 Rule 10 CPC filed by respondent No.5 was accepted and the referred respondent was ordered to be impleaded as defendant in the suit filed by the petitioner.

2. The facts, in brief, are that the petitioner filed a suit for declaration, mandatory and permanent injunction against respondents No.1 to 4 with respect to property bearing plot No.390-B, street No.39, sector F-11/3, Islamabad. Alongwith suit an application for interim injunction was also made and the learned Trial Court vide order dated 13.10.2011 granted the same, however, this was subsequently modified vide order dated 05.11.2011 and the parties were directed to maintain status quo. During the course of proceedings respondent No.5 moved an application under Order 1 Rule 10 CPC for impleadment in the case on the ground that he is a bonafide purchaser for value of the above mentioned property. The said application was accepted by the learned Trial Court vide order dated 06.01.2015.

3. Learned counsel for the petitioner, inter alia, submitted that the impugned order is without reasons and is non-speaking. It was further contended that respondent No.5 is neither a necessary nor proper party and the principle of *lis pendens* shall apply and, therefore, the impugned order is not in accordance with law. In support of his contentions learned counsel placed reliance on cases titled “Muhammad Naeem Butt Vs. Shaukat Ali & others” reported as (2008 SCMR 1024), “Atta Muhammad Vs. Muhammad Sharif” (2010 YLR 3242), “Noor Muhammad & 5 others Vs. Muhammad Ishaq & another” (2006 YLR 1223) and “Khalid Mahmood Vs. Najib Khan and 2 others” (2002 CLC 1160).

4. Learned counsel for respondent No.5 has defended the impugned order and contended that respondent No.5 is a proper and necessary party as he has acquired interest in the suit property. In support of his contentions learned counsel placed reliance on case titled “Abdul Majeed Vs. Abdur Rashid & 3 others” (2006 CLC 814).

5. Learned counsel for Capital Development Authority (CDA) also defended the impugned order and submitted that the case of the petitioner in the Trial Court is frivolous and the property has validly been transferred in favour of respondent No.5.

6. The suit property was transferred in the name of respondent No.5 on 11.08.2014 i.e. during the pendency of above mentioned suit. In such circumstances the *doctrine of ‘lis pendens’* as provided in section 52 of Transfer of Property Act, 1882 shall apply meaning thereby that the interest acquired by respondent No.5 is subject to outcome of the suit filed by the petitioner. In such like cases where a purchaser buys property during pendency of the suit it has been held by the Courts that he is not a necessary party. In case titled “Noor Muhammad & 5 others Vs. Muhammad Ishaq & another” (2006 YLR 1223) it was observed as follows:

“The petitioners claim to be bona fide purchaser of land but the golden principle is vendee-beware. It was the duty of the petitioners to find out whether any litigation about the land is pending or not. He was not the necessary party to be impleaded in the revision petition which was in continuation of suit filed in the year 1977. The sale he claims in his favour during the pendency of litigation is hit by the principle of lis pendens.”

In case titled “Khawaja Zia ul Islam Vs. Alaudin Malik” (2010 CLC 273) it was observed as follows:

Under Order I, rule 10 C.P.C. an intervener can be impleaded as a party only when either it is a necessary party or it is a proper party. Necessary party is the one, who ought to have been joined and in whose absence no effective adjudication can take place or decree passed. A proper party is the party whose presence is necessary before the Court in order to completely and effectually adjudicate upon and settle all questions involved in the suit. A subsequent purchaser who purchased the property during pendency of dispute between seller and buyer of the same property is neither necessary party nor proper party. Therefore, application under Order I, rule 10, C.P.C. is dismissed.

In case titled “Mst. Ilyas Begum Vs. Pakistan Defence Officers Housing Authority” (PLD 2011 Karachi 281) it held as follows:

The examination of provisions of Order I, Rule 10, C.P.C. shows that necessary party is one who ought to have been joined and in whose absence no effective adjudication can take place or decree passed while proper party is the party whose presence is necessary before the Court in order to completely and effectually adjudicate upon and settle all questions involved in the suit. Only those persons are necessary or proper parties to the proceedings whose interests are challenged in the suit and without their presence the suit could not be decided on merits. If the dispute in a suit can effectually be adjudicated upon in absence of a person such person is not a necessary party to be impleaded in the suit. Mere fact that person may, by some chance, became interested, in claiming property adversely to plaintiff is no ground for his being so impleaded because that would necessitate importation of facts not formed in the suit.

In case “Mohammad Naeem Butt Vs. Shaukat Ali” (2008 SCMR 1024) reliance was placed on an earlier judgement titled “M/s Amman Enterprises Vs. M/s Rahim Industries Pakistan Ltd.” (PLD 1993 Sc 292) in holding that a vendee during the pendency of proceedings is not a necessary party. The relevant portion of the judgement cited as (PLD 1993 SC 292) is reproduced below and is as follow:

"It was stated on behalf of respondent No.2 that it was not award of the agreement of 16-10-1978 between respondent No.1 and the appellant when it purchased the factory building; subsequently, it made huge investment on the plots in question and raised a factory which at its present value was worth more than Rs.2 crore; thus, it was not a fit case where specific performance of

the agreement should be allowed. This contention is without any merit. The rule of lis pendens is fully applicable in this case as respondent No.2 purchased the factory building during the pendency of the suit. If it had made any inquiries from the office of the Corporation it would have come to know, if it had not learnt otherwise earlier, that an agreement for the sale of the factory building existed between the appellant and respondent No.1. There is hardly any equity in its favour."

However, in the case titled "Mst. Khaista Jan & others Vs. Hafiz Ur Rehman & others" (1984 SCMR 709), the Hon'ble Supreme Court of Pakistan upheld the decision of the trial court whereby the application for impleadment was allowed.

In case titled "Rashid Ahmed Vs. Mst. Jiwan & 5 others" (1997 SCMR 171) it was held as follows:

"The appellant having purchased the suit property from respondent No.2 (during pendency of appeal, there was not only an assignment and creation of interest in respect of the property which was subject, matter of suit in his favour but he was also a person claiming through respondent No.2. The appellant having stepped into the shoes of respondent No.2 having purchased the suit property during the pendency of the proceedings was entitled to be impleaded as respondent in the appeal."

Likewise in case titled "Fazal Karim through legal heirs & others Vs. Muhammads Afzal through legal heirs & others" reported as (PLD 2003 SC 818) it was held as follows:

"No doubt, the registered agreement to sell dated 1-10-1979 and the subsequent sale-deed dated 30-12-1979 had taken place during the pendency of appeal yet the future complications and confusions could have been avoided through the impleadment of Fazal Karim and Mazhar Shah in the appeal. There is no harm at all if a vendee of a sale hit, if at all by the principle of lis pendens, is impleaded as party to the suit or appeal, as the case may be."

In case titled "Muhammad Shahban Vs. Falak Sher" (2007 SCMR 882) the Hon'ble Supreme Court of Pakistan held that person purchasing the property during the course of proceedings would be a proper party and should be impleaded.

In case titled "Chulam Ahmed Chaudhry Vs. Akbar Hussian"

(PLD 2002 SC 615), the Hon'ble Supreme Court of Pakistan while elucidating the provision of Order 1 Rule 10 CPC observed as follows:

"A wide judicial discretion is vested in the Court to add parties at any stage of the suit in whose absence no effective decree can be passed. It may be observed that where a necessary party is not impleaded, the decree may be not be binding on it. Likewise, a person against whom no relief is asked for, may not be a necessary party but he may be a proper party. For the purpose of addition of parties, the Court is governed by provisions of Order I, C Rules 1 and 2 and Order II, rule 3, C.P.C. In law a Court is empowered to bring on record only necessary or proper parties. Once a suit has been instituted, parties can be added only with the leave of the Court and not otherwise. Power of adding parties is not a question of initial jurisdiction but of judicial discretion, which has to be exercised having regard to all the facts and circumstances of the case."

Thus there is case law for and against the impleadment of purchaser who has purchased property during the pendency of the proceedings with respect to the property. However, the preponderance of the case laws of the Apex Court is for the impleadment of the purchaser as a party in the proceeding. Moreover, in *PLD 2002 SC 615*, supra it has been held that the powers under Order 1 Rule 10 CPC are wide and discretionary and are to be exercised on the touchstone of the test that whether the person seeking to be impleaded as a party is a necessary or a proper party. In *2007 SCMR 882* supra the August Supreme Court held the subsequent purchaser is a proper party.

7. In the instant case the trial court while accepting the application of respondent No.5 did not give reasons for his impleadment. However, since there is ample case law in favour of impleadment in such like cases, therefore, it is held that the discretion vested with the trial court under Order I Rule 10 CPC was exercised justly and there is no error of jurisdiction in the impugned order.

8. In view of foregoing discussion, the instant civil revision is dismissed.

(AAMER FAROOQ)
JUDGE

Altaf Malik

Announced in open Court on 11 March 2015

JUDGE

Approved For Reporting.