

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3805 of 2021

Khalique Zaman Chaudhary and others

Versus

Shabbir Anjum Mehdi and others

Dates of Hearing:	19.11.2021 & 17.01.2022
Petitioners by:	Mr. Taimoor Aslam Khan, Advocate
Respondents by:	Mr. Ali Nawaz Kharal, Advocate for respondents No.1 and 2 Mr. Mudassar Hussain Malik, Advocate for respondent No.4, Mr. Wasim Abid, Advocate for respondent No.5.

MIANGUL HASSAN AURANGZEB J.- Through the instant writ petition, the petitioners impugn the order dated 18.10.2021 passed by the Court of the learned Senior Civil Judge, Islamabad, dismissing their application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (“C.P.C.”) for impleading them as defendants in the suit for declaration and partition of immovable property instituted by respondent No.1 (Shabbir Anjum Mehdi).

2. The facts essential for the disposal of the instant writ petition are that vide registered lease deed dated 08.02.1983, the Capital Development Authority (“C.D.A.”) granted to M/s Conforce Limited leasehold rights in 16 industrial plots bearing Nos.333 to 340 and 349 to 356 all measuring 39,111 square yards situated in the Industrial Area, Sector I/9, Islamabad.

3. Vide registered sale deed dated 04.11.1984, seven persons namely (i) Muhammad Yousaf Mehdi (predecessor of respondents No.3(a) to 3(d)), (ii) Mobeen Anjum Mehdi (respondent No.2), (iii) Shabbir Anjum Mehdi (respondent No.1), (iv) Ch. Muhammad Gul Bahar, (v) Zulfiqar Ahmad, (vi) Mukhtar Ahmed, and (vii) Tariq Masood (respondent No.4) purchased the leasehold rights in the said 16 plots from M/s Conforce Limited. Vide letter dated 24.11.1985, the Estate Management Directorate of the C.D.A. transferred the allotment of the said 16 plots in favour of the said purchasers.

4. Vide registered sale deed dated 02.02.1986, the leasehold rights in 4 plots bearing Nos.339, 340, 355 and 356 were purchased by M/s British Biscuit (Pvt.) Company Ltd. (“M/s British Biscuit”). On 23.12.1985, Muhammad Yousaf Mehdi submitted an application to the C.D.A. for issuance of a No Objection Certificate (“NOC”) for the transfer of the leasehold rights in the said 4 plots. This application is on the letterhead of M/s British Biscuit. Vide letter dated 16.01.1986, the C.D.A. issued an NOC for the transfer of the said leasehold rights subject to the payment of a transfer fee. The transfer fee amounting to Rs.4,30,211/- was paid to the C.D.A. on 12.03.1986.

5. The transferees of the leasehold rights in the 16 plots made an arrangement under which 8 plots, bearing Nos.333, 334, 335, 336, 349, 350, 351 and 352, went to (i) Ch. Muhammad Gul Bahar, (ii) Zulfiqar Ahmad, and (iii) Mukhtar Ahmad whereas 8 plots bearing Nos.337, 338, 339, 340, 353, 354, 355 and 356, went to (i) Muhammad Yousaf Mehdi, (ii) Mobeen Anjum Mehdi, (iii) Shabbir Anjum Mehdi, and (iv) Tariq Masood. In this way, the 16 plots were bifurcated into two lots of 8 plots each. The C.D.A., vide its letter dated 17.04.1989, recognized and recorded this bifurcation. This letter makes reference to a mutual agreement between (i) Muhammad Yousaf Mehdi, (ii) Mobeen Anjum Mehdi, (iii) Shabbir Anjum Mehdi, (iv) Tariq Masood, and (v) M/s British Biscuit. Vide letter dated 17.08.1993, the C.D.A. informed M/s British Biscuit that the C.D.A. Board, in its meeting dated 25.11.1991, had decided to extend the lease period of all the industrial plots including plots Nos.339, 340, 355 and 356 “up to 99 years i.e., *“up to 25.08.2064.”*”

6. On 15.05.2008, Shabbir Anjum Mehdi filed a suit for declaration and partition of immovable property. The subject matter of the suit was the 8 plots that had fallen in the lot of Muhammad Yousaf Mehdi etc. The plaintiff in the said suit (respondent No.1 herein) prayed for a declaration to the effect that respondent No.4 (Tariq Masood) was only a *benami* owner in the said plots, and that his name recorded as a co-transferee in the sale deed as well as the transfer letter issued by the C.D.A. was *benami* in nature. In the said suit, it was also pleaded that the transfer of the 4 plots in favour of M/s British Biscuit was a

“paper transfer” necessitated purely for the purpose of securing loans, and that there was never an intention of selling any of the plots to the said Company. Respondent No.1 wanted the partition of the 8 plots between himself and respondents Nos.2 and 3(a) to 3(d) excluding respondent No.4. During the proceedings before the learned Trial Court, respondent No.2 (originally defendant No.2) was transposed as plaintiff No.2. M/s British Biscuit is not a party in the said suit.

7. Along with the said suit, respondent No.1 had also filed an application for interim injunction. Vide ad-interim order dated 20.06.2008, the learned Trial Court restrained the parties from selling or altering the character of the suit plots until further orders. Subsequently, vide order dated 23.12.2008, the learned Trial Court disposed of respondent No.1’s application for interim injunction in the following terms:-

“The order dated 20.06.2008 is confirmed and the status quo to the effect that no party shall sell or alter the character of the suit plot, shall continue till the final disposal of the suit.”

8. During the pendency of the said suit, two sale deeds dated 13.03.2012 were executed. Through the first sale deed, plot No.339 was sold by M/s British Biscuit (through its Chief Executive Officer, namely Tariq Masood / respondent No.4) to (i) Ms. Amna Sultan, and (ii) Ch. Khalique Zaman, and through the second sale deed, plot No.340 was sold by M/s British Biscuit to (i) Mrs. Anam Sultan, and (ii) Ch. Khalique Zaman. The said sales were made by M/s British Biscuit (through its Chief Executive Officer, namely Tariq Masood / respondent No.4). These deeds are not registered.

9. On 19.05.2021, the petitioners filed an application under Order I, Rule 10 C.P.C. praying for their impleadment as defendants in the said suit. In the said application, it is not mentioned as to when the petitioners came to know about the pendency of the said suit.

10. Vide order dated 18.10.2021, the said application was dismissed by the learned Trial Court. The primary reasons why the said application was dismissed was that the sale in favour of the petitioners had taken place during the existence of an injunctive order, and that M/s British Biscuit (from whom the petitioners claim to

have purchased plots No.339 and 340) was not impleaded as a party in the suit. The said order dated 18.10.2021 has been assailed by the petitioners in the instant writ petition.

11. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the petitioners were *bonafide* purchasers of plots No.339 and 340 through sale deeds dated 13.03.2012 executed with M/s British Biscuit, which was the lawful owner of the said plots; that the petitioners had purchased the said plots for Rs.13 million; that since respondents No.1 and 2 had transferred 4 plots including plots No.339 and 340 to M/s British Biscuit through registered sale deed dated 02.02.1986, they could not assert that M/s British Biscuit had not become the owner of the said plots; that respondents No.1 and 2's father had also applied to the C.D.A. to transfer the leasehold rights in the 4 plots in favour of M/s British Biscuit; that the NOC for the transfer of the said leasehold rights in favour of M/s British Biscuit had been granted by the C.D.A. on the application of Mr. Muhammad Yousaf Mehdi; that through resolution dated 12.03.2012 passed by M/s British Biscuit's board of directors, respondent No.4 was authorized to sell plots No.339 and 340; that since respondent No.1 had not impleaded M/s British Biscuit as a defendant in the suit, the injunctive order passed by the learned Trial Court was not applicable to it; that respondent No.4, who had executed the sale deeds dated 13.03.2012, cannot adequately protect the petitioners' interests in the litigation before the learned Trial Court; that neither do the petitioners have the intention of protracting the proceedings in the suit nor do they intend to turn the clock back by seeking to file a written statement or reframe the issues; and that since the suit is at the stage of cross-examination of the defendants' witnesses, the petitioners seek their impleadment as the defendants in the suit so as to cross-examine the defendants' witnesses. Learned counsel for the petitioners prayed for the writ petition to be allowed and for the impugned order dated 18.10.2021 to be set-aside.

12. On the other hand, learned counsel for respondent No.1 submitted that the petitioners were well aware of the injunctive order

passed by the learned Trial Court when they claim to have purchased plots No.339 and 340; that since the petitioners are *pendente lite* purchasers, the doctrine of *lis pendens* would apply; that pendente lite purchasers have no right of getting themselves impleaded as defendants in the suit; that the petitioners cannot set up a case independent from the party which is their predecessor-in-interest; that the suit has been pending since the past 13 years and the impleadment of the petitioners as defendants in the suit would delay the conclusion of the trial; that respondent No.4 has made a false assertion that through an agreement dated 03.02.1998, he had purchased 8 plots from Muhammad Yousaf Mehdi; that the said agreement has been held to be inherently void; that a suit for the specific performance of the agreement had been withdrawn by respondent No.4; that in order to secure a loan from the Industrial Development Bank of Pakistan for M/s British Biscuit, a sham sale deed dated 02.02.1986 was executed and registered whereby 4 plots bearing Nos.339, 340, 355 and 356 were transferred to M/s British Biscuit; that the name of M/s British Biscuit has never been recorded in the C.D.A.'s record as the owner of the said plots; that respondent No.4 had no authority to execute sale deeds in favour of the petitioners since he had never been appointed as the Chief Executive Officer of M/s British Biscuit; that respondent No.4 holds only 9.5% shares in M/s British Biscuit; that the petitioners have played fraud on this Court by basing their rights on unregistered sale deeds dated 13.03.2012 which are fake documents; that in fact the title in the said plots never vested in M/s British Biscuit and therefore, the alleged sale in favour of the petitioners is void; that at best M/s British Biscuit could claim interest in 2,444 square yards which constitutes only 1 plot; and that the impugned order whereby the petitioners' application under Order I, Rule 10 C.P.C. was dismissed does not suffer from any legal infirmity. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed. In making his submissions, the learned counsel for respondent No.1 placed reliance on the judgments in the cases of Muhammad Sabir Khan Vs. Rahim Bakhsh (PLD 2002 SC 303)

and Saleem-ud-Din Vs. Municipal Committee, Tando Allahyar (2000 SCMR 460)).

13. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 10 above, and need not be recapitulated.

14. The petitioners claim to have purchased plots No.339 and 340 through sale deeds dated 13.03.2012 during the pendency of the suit and subsistence of injunctive order dated 23.12.2008. The petitioners do not claim to have derived title in plots No.339 and 340 from any of the parties to the suit but from M/s British Biscuits, who respondent No.1 chose not to implead as a defendant in the suit. According to respondent No.1, M/s British Biscuit was established only for the purpose of securing a loan and for this purpose a sham agreement was executed whereby four plots (including plots No. 339 and 340) were transferred to said company. For the purposes of clarity, paragraph 5 of the suit and paragraph 6 of the written comments filed by respondent No.2 / Mobeen Anjum Mehdi before this Court are reproduced herein below:-

Paragraph 5 of the suit:-

“5. That the Mehdis (sans Defendant No.2) had already purchased a complete biscuit plant in UK which was brought into Pakistan. A factory was constructed on four plots Nos.339, 340, 355 & 356, entirely at their own expense. A company by the name of British Biscuit Co. Ltd. was also formed. Defendant No.1 wanted Defendant No.2 to work in the factory, hence he was given 2.5% shares therein again without any contribution. At the time of formation of the Company, as submitted above the plots were held jointly in the names of the buyers shown in the Sale Deed and no partition inter se between the co-owners had taken place. The said Company was a private family concern. In 1986, i.e. at any early point of time, a paper transfer of four plots was made in the name of the British Biscuits Company, which was necessitated purely for purposes of securing loans of a loan giving institution. The paper transfer was not formalized in the CDA. There never was any intention of selling any part of the plots to any outside party, as the British Biscuits Company was a family concern of the Mehdis with which M/s Gulbahar also had no concern.”

Paragraph 6 of respondent No.2's written comments:-

“6. That in 1985 in order to secure Bank loans from IDBP for the Company a sham Partition Deed was registered which showed

transfer/vesting only of 2444 sq. yds from plots No.339, 340, 355 & 356 in favour of BBC which was also so recorded in another sham sale deed dated 2-2-1986. Ownership was never vested in the Company which continue to vest in the 4 registered owners. Name of BBC as transferee was never recorded in CDA title registers nor in CDA Transfer Letter dated 23-4-1989.”

15. Whether or not the transfer of plots No.339 and 340 to M/s British Biscuit was a sham transaction is yet to be decided by the learned Civil Court. Presently, however, M/s British Biscuit is a going concern and has a legal personality distinct from its shareholders. It has not been struck off the register of companies by the Securities and Exchange Commission of Pakistan. An incorporated company, as is well known, has a separate existence and the law recognizes it as a juristic person, separate and distinct from its members. A company in holding its property and carrying on its business is not the agent of its shareholders. The liability of shareholders in the liability of a company is limited to the extent of unpaid amount on his shares unless otherwise provided in its memorandum. In the case of Solomon Vs. Solomon & Co. Ltd. (1897 AC 22), the House of Lords held that in law, a company is a person altogether different from its shareholders and directors and the shareholders and Directors of the company are not liable for the debts of the company except to the extent permissible. Law to the said effect has also been laid down in the cases of Haji Khuda Bux Nizamani Vs. Election Tribunal (2003 MLD 607), Eastern Federal Union Insurance Company Limited Vs. State Life Insurance Corporation of Pakistan (1987 CLC 1408), Rai Bahadur Mohsin Singh Oberoi Vs. Rai Bahadur Jodha Mal Kuthalia (PLD 1961 SC 6) and E.B.M. Company Ltd. Vs. Dominon Bank (AIR 1937 PC 279).

16. The petitioners assert that the sale deeds with respect to plots No.339 and 340 were signed by Tariq Masood/respondent No.4, who had been authorized to sell plots No.339 and 340 through resolution dated 12.03.2012 passed by the Board of Directors of M/s British Biscuit. Although respondent No.4 is a party in the suit, he signed the said sale deeds dated 13.03.2012 in his capacity as the person authorized by M/s British Biscuit, which has a legal personality distinct from respondent No.4. Therefore, *prima facie*, the petitioners

purchased the said two plots from M/s British Biscuit and not from respondent No.4.

17. Respondent No.1 herein is the plaintiff in the suit and as *dominus litis* he preferred not to implead M/s British Biscuit (which according to respondent No.1 never became the actual or true owner of plots No.339 and 340) as a defendant in the suit. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I, Rule 10(2) of C.P.C., which provides for impleadment of proper or necessary parties.

18. Respondent No.4, in his individual capacity, was a co-owner along with respondents No.1 and 2 and the predecessor of respondents No. 3(a) to 3(d) in plots No.339 and 340 prior to their disputed transfer to M/s British Biscuit. Although respondent No.1 admitted that M/s British Biscuit was indeed incorporated *albeit* to secure a loan, he asserts that the transfer of plots in favour of said company was a “paper transfer.”

19. The C.D.A., in its written statement, has pleaded that plots No. 339 and 340 were owned by M/s British Biscuits. Now, in the event respondent No.1 succeeds in proving that plots No.339 and 340 were never in fact transferred to M/s British Biscuit, and therefore the latter could not transfer them further to the petitioners, the petitioners’ rights acquired in the said plots through sale deeds dated 13.03.2012, *albeit pendente lite* and during the subsistence of an injunction, would be most adversely affected. The outcome of the suit may have significant consequences for the petitioners in that if respondent No.1’s suit is decreed in the petitioners’ absence, they would lose their ownership rights in the said plots. The petitioners’ apprehension that in their absence from the proceedings the parties to the suit might collude against them is understandable. To deny them the right to be impleaded as parties to the suit so that they could protect their

interest in the said plots would be unjust. It is for the learned Trial Court to decide whether or not M/s British Biscuit is a necessary party and should have been impleaded as a party in the suit. However, for the omission on respondent No.1's part to implead M/s British Biscuit as a defendant in the suit, the learned Trial Court has penalized the petitioners by dismissing their application for impleadment as parties in the suit.

20. True, vide interim order dated 23.12.2008, the learned Trial Court restrained the parties to the suit from selling or altering the character of the suit plots. The injunctive order issued by the learned Trial Court bound the parties to the suit but not M/s British Biscuit or the petitioners, who are admittedly not parties to the suit. Therefore, I am of the view that the learned Trial Court's order dismissing the petitioners' application for impleadment as defendants in the suit is perverse and arbitrary.

21. In the case of Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. (AIR 2013 SC 2389), the question that fell for consideration before the Supreme Court of India was whether a transferee *pendente lite* having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as a party under Order I, Rule 10 C.P.C. on the basis of sale deeds executed in his favour by the defendant in the suit. In the said case the learned counsel for the defendant had given an undertaking to the effect that the defendant would not transfer or alienate the suit property. Notwithstanding the order passed by the Court regarding the undertaking, the defendant sold the suit property to a third party, who filed an application under Order I, Rule 10 C.P.C. for its impleadment as a party in the suit. After taking into consideration the relevant facts, the Supreme Court of India held that the third party purchaser had entered into a clandestine transaction with the defendant and got the suit property transferred in its favour, and therefore the third party purchaser cannot be held to be a *bonafide* purchaser without notice. Nevertheless, the Supreme Court of India set aside the concurrent orders of the Delhi High Court whereby the third party purchaser's application under Order I, Rule 10

C.P.C. was dismissed, and the said application was allowed *“for the ends of justice”* to be met. Furthermore at paragraph 52, it was held that the sale in favour of the third party purchaser in breach of the injunction could not be rendered ineffective, and that *“the party committing the breach may incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue against the vendor.”*

22. The petitioners’ case is on a better footing than the one in the aforementioned case inasmuch as the petitioners do not claim to derive title in plots No.339 and 340 from any party in the suit but from M/s British Biscuit, which is admittedly not a party in the suit.

23. The doctrine of *lis pendens* is predicated on the legal maxim *‘lite pendente nihil innovetur’* which means during legal proceedings nothing new should be introduced. This doctrine is embodied in Section 52 of the Transfer of Property Act, 1882 which reads thus:-

“52. Transfer of property pending suit relating thereto. During the pendency in any Court having authority in Pakistan or established beyond the limits of Pakistan by the Federal Government of any suit or proceeding 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 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 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.”

(Emphasis added)

24. Section 52 of the Act *ibid* does not declare a *pendente lite* transfer by a party to the suit as void or illegal but only makes the *pendente lite* purchaser bound by the decision of the pending litigation. The effect of the applicability of the doctrine if *lis pendens* is that it does not annul the conveyance but only renders it subservient

to the rights of the parties to the litigation. In the case of Rashid Ahmad Vs. Mst. Jiwan and 5 others (1997 SCMR 171), the Hon'ble Supreme Court considered the question whether the doctrine of *lis pendens* could be set up as a bar to an application by a transferee *pendente lite* from being impleaded as a party to the pending proceedings. It was held that Section 52 of the Transfer of Property Act, 1882 did not envisage any such prohibition. Additionally, in the case of Surraya Begum Vs. Subhan Begum (1992 SCMR 562), the Hon'ble Supreme Court held as follows:-

*“Under section 52 of the Transfer of Property Act, a transfer of immovable property in suit to which any right is directly or specifically claimed, is not completely prohibited. What is contemplated by this provision is that the property cannot be transferred or otherwise dealt with, without permission of the Court by any party to suit or proceedings so as to affect rights of any other party thereto and under any decree or order which might be passed therein. **Subject to these reservations, property can be transferred even without permission of the Court, but the transferee or donee or assignee would acquire right thereto or interest therein only subject to the judgment or order of the Court in the suit.**”*
(Emphasis added)

25. It is also well settled that there is no absolute rule that the transferee *pendente lite* without leave of the Court should in all cases be allowed to join and contest the pending suits. A *pendente lite* purchaser has no automatic right to be impleaded and the same is the discretion of the Court based on the facts and circumstances of the case. The object of Order I, Rule 10 C.P.C. is to discourage contests on technical pleas, and to save honest and *bonafide* claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit when, without his presence, questions in the suit cannot be completely decided. For deciding an application under Order I, Rule 10 C.P.C., no elaborate inquiry is required but a purchaser *pendente lite* should ordinarily be made a party in the pending proceedings to enable him to protect his interest. Where the trial Court sees an attempt on the part of an applicant to complicate and delay the pending suits, it ought not to show equity in his favour. Where a *pendente lite* purchaser is permitted to be impleaded as a party to a suit, he would not be entitled to defend the suit independently from the party through

whom he claims ownership rights. The transferee *pendente lite* will be bound by the result of the suit or proceeding, whether or not he had notice of the suit or proceeding. The judgment delivered and the findings recorded against the *pendente lite* seller would be binding on the *pendente lite* purchaser in the same manner and to the same extent as it was binding on the *pendente lite* seller of the suit property.

26. The doctrine of *lis pendens* will apply to a *pendente lite* sale where the predecessor-in-interest of the transferee is a party to the litigation. In the case at hand, the petitioners have not purchased plots No.339 and 340 (which in addition to 6 other plots are the subject matter of the suit) from any defendants in the suit but from M/s British Biscuits. Since the petitioners did not purchase the said plots from any of the parties in the suit, the sale transaction between M/s British Biscuits and the petitioners would, in my view, not be hit by the doctrine of *lis pendens*. In holding so, reliance is placed on the law laid down in the following judgments:-

- (i) In the case of Muhammad Ashraf Butt Vs. Muhammad Asif Bhatti (PLD 2011 SC 905), the Hon'ble Supreme Court, after making reference to Section 52 of the Transfer of Property Act, 1882, has authoritatively interpreted the said provision in the following terms:-

“The virtual and true object of lis pendens is to protect and safeguard the parties to the suit and their rights and interest in the immovable suit property against any alienation made by either of the parties, of that property, during the pendency of the suit in favour of a third person. The rule unambiguously prescribes that the rights of the party to the suit, who ultimately succeed in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis. ... The foundation of the doctrine is not rested upon notice, actual or constructive, it only rests on necessity and expediency, that is, the necessity of final adjudication that neither party to the litigation should alienate the property so as to effect the rights of his opponent. If that was not so, there would be no end to litigation and the justice would be defeated.”

(Emphasis added)

Furthermore, in the case of Muhammad Ashraf Butt Vs. Muhammad Asif Bhatti (supra), it was clarified that the

doctrine of *lis pendens* would not be attracted to a sale of the suit property prior to the institution of the suit or sale of the suit property by a person prior to his impleadment as a party in the suit. In this regard it was held as follows:-

*“9. Now considering the instant case in the light of the principles mentioned above, it is clearly spelt out from the record that the appellants have purchased the property during the pendency of the suit and Yaqoob son of Ishaq was a party to the suit who was duly implead as a defendant on 14-2-1980 and had sold the property to Yaqoob son of Khuda Bakhsh on 2-4-1980 from whom the appellants via Jamshed acquired their title subsequently on 12-10-1984. In this context, it may be elucidated that Khalid had sold the property to Yaqoob son of Ishaq prior to the institution of the suit, therefore, if the latter was not impleaded as a party, and had made any transfer even during the pendency of the suit, such alienation would not have attracted lis pendens as being not a party thereto, but when the afore-named was arrayed as a defendant on 14-2-1980, from that point of time he shall for the purposes of section 52 *ibid* be the party to the suit, and thus for all considerations thereof was the predecessor in interest of the appellants, notwithstanding the fact that Yaqoob son of Khuda Bakhsh, who himself had purchased the property from him during the pendency of the suit was made a party to the suit or not.”*

In the said report, reference was also made to the case of Simla Banking Industrial Co. Ltd. Vs. Firm Luddar Mal (AIR 1959 Punjab 490), wherein it was held as follows:-

*“The rule of *lis pendens* lays down that whoever purchases a property during the pendency of an action, is held bound by the judgment that may be made against the person from whom he derived his title (to the immovable property, the right to which is directly and specifically in question in the suit or proceeding) even though such a purchaser was not a party to the action or had no notice of the pending litigation....”*

(ii) In the case of Amit Kumar Shaw Vs. Farida Khatoon (2005 (11) SCC 403), the Indian Supreme Court held as follows:-

*“16. The doctrine of *lis pendens* applies only where the *lis* is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit.”*

- (iii) In the case of West Virginia Pulp and Paper Co. Vs. Cooper (106 S.E. 55, 60, 87 W.Va. 781), wherein it was held that *“the doctrine of lis pendens is that one who purchases from a party pending suit a part or the whole of the subject-matter involved in the litigation makes it subject to the final disposition of the cause and is bound by the decision that may be entered against the party from whom he derived title.”*

27. It ought to be reiterated that the petitioners have not purchased plots No. 339 and 340 from any of the parties to the suit. If the petitioners are not permitted to be impleaded as parties to the suit, they would not be bound by the final outcome of the suit. In the case of Kala Chand Vs. Jagannath (AIR 1927 PC 108), it was held that a person who applied to be made a party but was refused is not bound by the decision in the suit. The concepts of complete adjudication of disputes and avoidance of multiplicity of proceedings would also be defeated if the petitioners are not allowed to be impleaded as parties in the suit.

28. I am conscious of the fact that the order dated 18.10.2021 passed by the learned Trial Court whereby the petitioners' application under Order I, Rule 10 C.P.C. was dismissed has been assailed in the instant petition filed under Article 199 of the Constitution. The discussion herein above would show that I have come to the conclusion that the order impugned in the instant petition is not in accordance with the law, and is, therefore, outside the jurisdiction conferred on it. This is reason enough for interference with the said order. In the case of Fazli Hakeem Vs. Secretary, State of Frontier Regions Division, Islamabad (2015 SCMR 795), it was held as follows:-

“It cannot be ignored altogether that a repository of executive, judicial or quasi judicial power is required to act in accordance with the law. For the very condition for the conferment of such power is that it has to act in accordance with the law. If and when it would go wrong in law it would go outside its jurisdiction. An order thus passed would be non-est. Such order cannot be protected simply because the repository of such power has the power to pass such order.”

29. Additionally, in the case of Muhammad Ashraf Butt Vs. Muhammad Asif Bhatti (*supra*), the Hon'ble Supreme Court spurned the objection to the jurisdiction of the High Court to interfere with a

revisional order of the Court of the Additional District Judge, by issuing a writ of *certiorari*, in the following terms:-

“10. ... Suffice it to say that on account of the provisions of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, it is an alienable right of every citizen to enjoy the equal protection of law and to be treated in accordance with law, therefore, if a revisional Court has passed an order which does not qualify the test of Article 4 ibid and suffer from a patent error, of fact, such as non-reading/misreading of the facts on the record or has committed a grave illegality in applying the correct law, such as the error of misapplication and non application of correct law, thus being an illegality of a sheer nature can always be rectified by the High Court while exercising its constitutional jurisdiction under Article 199, as no bar/limitation in this behalf on the exercise of constitutional jurisdiction of the High Court either emanates from the plain reading of the Article or can be read into it.”

30. For the reasons aforementioned, I have no other option but to allow the instant petition and hold that the impugned order dated 18.10.2021 is unsustainable. It is set aside accordingly. The matter is remanded to the learned Trial Court for a decision afresh on the petitioners' application under Order I, Rule 10 C.P.C. This judgment shall have no bearing on the learned Trial Court while deciding the main suit filed by respondent No.1. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 05/04/2022

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING