



A.F.R

Reserved On: 16.10.2025

Delivered On: 13.11.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL REVISION No. - 12 of 2024

Deependra Chauhan

.....Revisionist(s)

Versus

Phool Kumari Chauhan and 4 others

.....Opposite Party(s)

Counsel for Revisionist(s)	: Shiv Sagar Singh
Counsel for Opposite Party(s)	: Aditya Gupta, Harsh Vardhan Gupta, J.b. Singh, Vijay Kumar

Court No. - 5

HON'BLE MANISH KUMAR NIGAM, J.

1. This revision has been filed challenging the judgment and order dated 29.08.2023 passed by Civil Judge (Senior Division) Gautam Buddh Nagar in Original Suit No. 347 of 2020 (Deependra Chauhan Vs. Phool Kumari Chauhan and others), allowing an application filed by respondent Nos. 4 and 5 under Order I Rule 10 of C.P.C. being paper No. 57 Ga-2.

2. Brief facts of the case are that Original Suit No. 347 of 2020 (Deependra Chauhan Vs. Phool Kumari Chauhan and others) was instituted by the plaintiff-revisionist for a decree of partition of the suit property bearing No. C-103 B Sector-39, NOIDA, District- Gautam Buddh Nagar area 163 sq. mtrs. The other relief sought in the suit was a decree of permanent injunction restraining the defendants and their associates from dispossessing the plaintiff from suit property and further

restraining them from creating any third party interest in the property in dispute. As per the plaint case, property in question belonged to Sri B.S. Chauhan s/o M.S. Chauhan, (father of the plaintiff-revisionist) and Smt. Phool Kumari w/o Sri B.S. Chauhan (mother of the plaintiff-revisionist). After the death of the father of the revisionist i.e. Sri B.S. Chauhan, with the consent of his heirs, name of Smt. Phool Kumari Chauhan i.e. mother of the revisionist was mutated in the records of NOIDA Authority. According to the plaint case, the property in question was joint property in which plaintiff had a share being heir of deceased B.S. Chauhan after his death. A dispute arose between the members of the family which lead to the institution of the present suit. During pendency of the suit an application under Order I Rule 10(2) of C.P.C. read with Section 151 C.P.C. was filed by the respondent Nos. 4 and 5 claiming impleadment in the suit on the ground that the defendant No. 1 (mother of the plaintiff) has executed an agreement to sell in their favour on 12.07.2023. To the said application, the plaintiff-revisionist filed his objection claiming inter alia that the defendant No. 1 is not the sole owner of the property and is a co-owner of the property with plaintiff and other defendants in the suit and has no right to execute the agreement to sell in respect of the entire property in dispute. It has also been pleaded that the agreement to sell has been executed by the defendant No. 1 in collusion with defendant No. 2 in order to frustrate the claim of the plaintiff-revisionist. It has been further pleaded that after the institution of the suit, defendant No. 1 applied for permission from NOIDA Authority for no objection to sell the property, which has been rejected by the NOIDA Authority by order dated 14.06.2023. The trial court by judgment and order dated 29.08.2023 allowed the impleadment application filed by respondent Nos. 4 and 5. Hence the present revision.

3. It has also been contended by counsel for the revisionist that court below has erred in law in allowing the application filed by respondent Nos. 4 and 5 on the basis of an agreement to sell executed in their favour by respondent No. 1 as the agreement to sell does not confer any title on the parties. At the best, holder of an agreement to sell is entitled for

specific performance of the agreement. It has been further contended that NOIDA Authority has refused permission to execute the sale deed of the property in dispute by order dated 14.06.2023. It has also been contended that respondent No. 1 being co-owner has no right to execute the agreement to sell of the entire property in favour of respondent Nos. 4 and 5 and as a matter of fact, the agreement to sell has been executed by respondent No. 1 in collusion with respondent Nos. 2, 4 and 5 in order to frustrate the claim of the plaintiff-revisionist. Learned counsel for the revisionist submitted that agreement to sell executed in favour of respondent Nos. 4 and 5 is hit by Section 52 of Transfer of Property Act.

4. *Per contra*, learned counsel for the respondents submitted that the agreement to sell was validly executed by respondent No. 1 in favour of respondent Nos. 4 and 5. It has also been contended by counsel for the respondent that because of agreement to sell in their favour, respondent Nos. 4 and 5 have interest in the suit property and therefore, they are necessary party in the suit and the application filed by them has rightly been allowed by the trial court.

5. In reply to the submissions made by counsel for the respondent, learned counsel for the revisionist submitted that question involved to be decided in the suit is whether defendant-respondent No. 1 is the sole owner of the property in dispute or is a co-sharer along with plaintiff and other respondents and unless, such question is finally determined, she has no right to execute the agreement to sell in favour of respondent Nos. 4 and 5. It has been further submitted that since agreement to sell does not convey any right except to get the sale deed executed in pursuance of agreement to sell, respondent Nos. 4 and 5 are neither necessary nor proper party to the suit and the court below has wrongly allowed the application.

6. An agreement to sell of property and promise to transfer the property convey the same meaning and effect in law. A promise to transfer property is an agreement for sale of property. According to Section 54 of Transfer of Property Act, an agreement to sell does not

create any interest in the proposed vendee in the suit property but only creates an enforceable right to the parties. An agreement for sale is not the same as sale and the title to the property agreed to be sold vests in the vendor in case of an agreement to sell but in the case of sale, title of property vests with the purchaser. An agreement for sale is a executory contract wherein a sale is a executed contract. The question as to whether an agreement to sell creates any right is no more res-integra and has been settled by authoritative pronouncement made by this Court as well as Apex Court and various other High Courts.

7. The Supreme Court in case of **State of U.P. v. District Judge and others reported in (1997) 1 SCC 496** held in paragraph no. 7 as under:

“7. Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an agreement to sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered Sale Deed. It is not in dispute that the lands sought to be covered were having value of more than Rs.100/-. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect.”

8. In case of **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (dead) through LRS. reported in (2004) 8 SCC 614**, the Supreme Court held in paragraph no. 13 as under:

“13. The agreement to sell does not create an interest in the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs. 100. Therefore, unless there was a registered

document of sale in favour of the Pishorrilal (proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership.....”

9. This Court in case of **Babu Lal and others v. Nathi Lal reported in 2013 (6) ADJ 111 (MANU/UP/0838/2013)**, has held in paragraph no. 17 as under:

"17. The agreement for sale or contract for sale, by itself is not an instrument giving effect to sale of immoveable property. The title to property agreed to be sold continued to vests in the vendor, in case of agreement for sale, but in case of sale, title or property vests with purchaser. In other words an agreement for sale is an executory contract whereas sale deed is an executed contract. An agreement for sale does not create an interest in the proposed vendee in the suit property but only creates an enforceable right in parties. An agreement for sale of property, and promise to transfer the property convey the same meaning and effect in law. A promise to transfer property is an agreement for sale of property.”

10. In **Maung Shwe Goh v. Maung Inn, 1917(1) Bom LR 179** the Court considered Section 54 of Transfer of Property Act, 1882 and said that a contract for sale by virtue of Section 54 creates no interest in or charge upon the land.

11. In **Jiwan Das v. Narain Das, AIR 1981 Delhi 291** a Single Judge in para 10 and 11 of the judgment, following Rambaran Prosad (supra), said:

"10. the law in India does not recognize any such estate. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate, No privity in estate can be deduced there from which can bind estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale.

11. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed."

12. Learned counsel for the respondents submitted that agreement to sell created an equitable interest in the land in favour of proposed vendee. Argument of learned counsel for the respondents is misconceived. The law in India does not recognize equitable estates and the English rule that the contract makes proposed vendee owner in equity of the estate does not apply in India.

13. In case of **Rambaran Prosad v. Ram Mohit Hazra and others reported in AIR 1967 SC 744 & MANU/SC/0212/1966**, the Supreme Court has held in paragraph nos. 14 & 15 as under:

"14. In the case of an agreement for sale entered into prior to the passing of the Transfer of Property Act, it was the accepted doctrine in India that the agreement created an interest in the land itself in favour of the purchaser.....

15. But there has been a change in the legal position in India since the passing of the Transfer of Property Act. Section 54 of the Act states that a contract for sale of immovable property "does not, of itself, create any interest in or charge on such property"

14. Thus, in my view from the judicial opinion as discussed above and in view of Section 54 of the Transfer of Property Act, an agreement to sell does not create any interest in or charge upon such property which is subject matter of the agreement to sell. The prospective vendee in an agreement to sell only gets a right to get the agreement specifically enforced for execution of sale deed. In other words, a person having an agreement for sale does not get any right over the property except the right of litigation on that basis. A contract for sale does not, by itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No

privity in estate can be deduced therefrom which can bind the estate, as is the position in cases of mortgage, charge or lease. Contract for sale would not make the proposed vendee to be owner in equity of the estate so long as sale deed is not executed. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed.

15. Contention of learned counsel for the revisionist is that the Section 52 of Transfer of Property Act prohibits the alienation of property in dispute during pendency of the suit so as to affect the right of other party to the suit without obtaining leave from the court. It is further contended that respondent Nos. 4 and 5 have no interest in the property and are neither necessary nor proper party to the suit.

16. It is beneficial to reproduce Order I Rule 10 and Section 52 of the Transfer of Property Act, 1882 which read as under:

"Order I Rule 10

10. Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court

effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended. Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

Section 52 of the Transfer of Property Act

"52. Transfer of property pending suit relating thereto. During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central 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 the 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 purposes 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."

17. The object of Order I Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide 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 in the following two cases:

(1) when he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) when, without his presence, the questions in the suit cannot be completely decided.

18. The power of a court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.

19. Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

1. There must be a suit or proceeding pending in a court of competent jurisdiction.

2. The suit or proceeding must not be collusive.

3. The litigation must be one in which right to immovable property is directly and specifically in question.

4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.

5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

20. 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.

21. In case of **Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another; 2004 (1) SCC 191**, the Hon'ble Supreme Court has held as under in paragraph Nos. 10 and 11:-

"10. The decisions cited and relied on behalf of the appellant turned on the facts of each of those cases. They are distinguishable. 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. The decision relied on behalf of the contesting respondents of this court in the case of Savinder Singh (supra)¹ fully supports them in their contentions. After quoting section 52 of the Transfer of Property Act, the relevant observations are thus :-

"Section 52 of the Transfer of Property Act envisages that :- 'During the pendency in any court having authority within the limits of India .. 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 the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.'

It would, therefore, be clear that the defendants in the suit were prohibited by operation of section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit. "

11. In case of Dhurandhar Prasad Singh², observations relevant for the purpose of these appeals read thus:-

¹[1996 (5) SCC 539]

²[2001 (6) SCC 534]

"Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary."

22. In the present case, the respondent Nos. 4 and 5 have not acquired any right in the property in dispute as there is only an agreement to sell in their favour and not a sale deed. The proposed vendee in an agreement to sell in his favour do not get any right in law or even in equity with regard to the property covered under the agreement and has only right to get another deed executed. Therefore, in my view a person having an agreement to sell in his favour is neither necessary nor a proper party to the suit. The court has erroneously allowed the application for impleadment filed by respondent Nos. 4 and 5.

23. The court below has acted in exercise of its jurisdiction with material irregularity. The judgment and order dated 29.08.2023 is hereby set aside. The revision is **allowed**. No order as to costs.

(Manish Kumar Nigam,J.)

November 13, 2025

Nitika Sri.