

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CMPMO No. 124 of 2011**

**Decided on: 31.08.2011**

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Vijay Kumar ...Petitioner.

Versus

Santosh Kumar & others ...Respondents.

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*Coram*

**The Hon'ble Mr. Justice Deepak Gupta, J.**

*Whether approved for reporting?*<sup>1</sup> *No.*

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For the petitioner: Mr. Rajinder Singh Kanwar,  
Advocate.

For the respondents: Mr. Pritam Singh Chandel,  
Advocate, for respondent No. 1.

Respondents No. 2, 3 and 5  
already ex-parte.

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**Deepak Gupta, J. (Oral)**

By means of this petition the petitioner has challenged the order dated 20.12.2010 passed by the Civil Judge (Junior Division), Court No. III, Hamirpur, whereby the application filed by the petitioner (hereinafter referred to as the applicant) for impleading him as a party-defendant in the Civil Suit filed by respondent No. 1 herein against respondents No. 2 to 5, was rejected.

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<sup>1</sup> *Whether the reporters of local papers may be allowed to see the Judgment? Yes.*

2. The case of the applicant is that defendant No. 4, Kunta Devi, had sold part of the suit property to him vide sale deed dated 17.09.2007 and, therefore, he has right, title and interest in the suit property and is a necessary party to the proceedings.

3. The plaintiff, Santosh Kumar, contested the application. Surprisingly, defendant No. 4, Kunta Devi, also contested the application. She stated that the sale deed is bogus and is a result of fraud played upon her by the applicant and, therefore, she is not bound by the same. It is apparent that, defendant No. 4, as far as this part of the case is concerned, is colluding with the plaintiff. The learned trial Court rejected the application only on the ground that the principle of *lis pendens* applies to the present proceedings. It may be true that in terms of Section 52 of the Transfer of Property Act, any transaction made during the pendency of civil proceedings are subject to the proceedings but that does not mean that the party, who is affected, does not have a right to be impleaded and heard in the suit.

4. The applicant rightly or wrongly claimed that on the basis of the sale deed, he has become owner and is entitled to defend the proceedings qua his portion of the property. It has been urged before me by Shri Pritam Singh Chandel, learned counsel for respondent No. 1 that the plaintiff is the *dominus litis* of the suit and he cannot be compelled to array any party as

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a defendant in the suit. It is for the plaintiff to decide whether he wants to array the applicant as a party or not. In case the plaintiff does not care to array the applicant as party to the suit, after the applicant has clearly stated that he had purchased the property from defendant No. 4, then the plaintiff shall take the risk of proceeding with the suit without making the applicant a party to the suit. It is further clarified that in such suit, the rights of the applicant cannot be determined and any finding given in the suit will not effect the rights of the applicant in any manner whatsoever.

5. I had specifically asked learned counsel for respondent No.1-plaintiff whether the plaintiff is willing to array the applicant as a party-defendant or not. It has been stated that the plaintiff is not willing to array the applicant as a party. Therefore, this petition is disposed of with the clarification that any finding given in Civil Suit No. 107 of 2007 filed by the plaintiff shall not affect the rights of the applicant and to this extent, the order of the learned trial Court is set aside. No order as to costs.

**(Deepak Gupta)**  
**Judge**

**August 31, 2011**  
(rajni)