

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

**CMPMO No.: 211 of 2020**

**Date of Decision: 29.02.2020**

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Smt. Kamlesh Vaid ...Petitioner.

Vs.

Shri Karam Singh and others ..Respondents.

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***Coram:***

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge***

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

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For the petitioner: M/s Rajiv Rai & Lakshay Kumar,  
Advocates.

For the respondents: Nemo.

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**Ajay Mohan Goel, Judge** (Oral):

By way of this petition filed under Article 227 of the Constitution of India, the petitioner has prayed for the following reliefs:

*“It is therefore respectfully prayed that keeping in view the above narrated facts and circumstances, the present petition may kindly be allowed and the impugned order dated 23.12.2019 vide Annexure P/1 and the impugned order dated 30.07.2019 vide Annexure P/2 passed in CMA No. 89-6 of 2018 passed by the learned Senior Civil Judge, Shimla, Himachal*

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

*Pradesh in Civil Suit No. 1175-1/10, titled as Smt. Kamlesh Vaid Versus Shri Karam Singh may kindly be quashed and set aside. Any other or further order as this Hon'ble Court deems fit and proper may kindly be passed in the interest of justice and fair play."*

**2.** Having heard learned counsel for the petitioner and having perused the orders which stand impugned by way of this petition, the Court does not find any merit in the present petition.

**3.** Vide impugned order dated 30.07.2019, learned Court below has dismissed an application filed under Order 6, Rule 17 of the Code of Civil Procedure by the petitioner herein, who is plaintiff before the learned Court below for amendment of plaint. This application has been dismissed by the learned Court below by holding as under:

*"5. The plaintiff has filed the present suit seeking relief of permanent prohibitory and mandatory injunction restraining the defendants. As per the original plaint, the plaintiff states that cause of action arose to her on 04.10.2010 when the defendant No. 1 started raising construction on the land in question. In the order dated 18.12.2015, it has been observed that the vendor of original defendant No. 2 Smt. Sarita shall be bound by the doctrine of lis-pendence and there is no*

*necessity of his impleadment. The plaintiff has not sought the relief of partition in the case, which is also beyond scope of Civil Court. In these circumstances, I am of the considered view that the amendment is neither necessary nor essential for the proper adjudication of the matter in dispute, but is barred, in view of the order dated 18.01.2015 passed by this Court, whereby earlier application moved by the plaintiff under Order 22 Rule 10 CPC was dismissed. Application after doing needful be tagged with the main case file.”*

**4.** During the course of arguments, learned counsel for the petitioner could not dispute the fact that vide order dated 18.12.2015, an application filed under Order 22, Rule 10 of the Code of Civil Procedure by the petitioner was dismissed by the learned Trial Court, which order was not assailed by her and prior to that, an application filed under Order 1, Rule 10 of the Code of Civil Procedure for deleting the name of defendant No. 2 Smt. Sarita from the array of defendants was allowed by the learned Trial Court on 18.03.2017 at her behest. The application which subsequently stood filed under Order 6, Rule 17 of the Code of Civil Procedure by the petitioner/plaintiff was on the ground that Smt. Sarita had sold the property in issue to Shri Chetan Chauhan and as now he was a necessary party, he may be impleaded as a defendant.

**5.** The dismissal of the said application by the learned Trial Court cannot be faulted with. The suit, as has been observed by the learned Trial Court, is for permanent prohibitory injunction and mandatory injunction. This suit has to be contested by the defendant on the basis of pleadings, which stood incorporated in it. Learned Trial Court has also taken note of the fact that vide order dated 18.12.2015, there was an observation made by the learned Trial Court that the original defendant No. 2 shall be bound by the doctrine of *lis pendence*. Learned Trial Court while dismissing the application filed under Order 6, Rule 17 CPC has held that Sh. Chetan Chauhan was not a necessary party to the suit. These findings, as held by me hereinabove, call for no interference, as the act of subsequent purchaser shall be governed by the principle of *lis pendence*.

**6.** Similarly, order dated 23.12.2019, vide which, learned Trial Court proceeded under the provisions of Order 17, Rule 2/3 of the Code of Civil Procedure cannot be faulted with, because order dated 23.12.2019 is a self speaking as to why the same was passed by the learned Court below, relevant portion of which reads as under:

*“Called again. Defendant No. 1 is present for examination, but at this stage, Ld. Counsel for the plaintiff Sh. Harsh Khanna has made separate statement stating no instructions on behalf of the plaintiff. He further*

*stated that the plaintiff has already taken brief from him for assailing order of the Court. He also stated that he has informed the plaintiff by way of registered letter about his intention to plead no instruction.*

*This is an old case of the year 2020 and is being listed for defendant's evidence since 27.06.2013. The defendant No. 1 appeared for his testimony for the first time on 9.4.2018 on which date, an application under Order 17, Rule 1 CPC was filed seeking adjournment of the case which was allowed subject to cost of Rs.800/-. Thereafter, amendment application was filed by the plaintiff which was disposed of on 30.7.2019 and the case was again list for examination of defendant. On 4.12.2019, defendant No. 1 was again present for examination, but vice counsel had appeared on behalf of the plaintiff and sought adjournment due to absence of he senior counsel, which prayer was granted as last opportunity and final opportunity for today subject to cost of Rs.1000/-.*

*Neither plaintiff is present today nor has she tendered cost imposed on the previous date. It was also made clear in the order dated 4.12.2019 that plaintiff is to ensure presence of her counsel for examination of defendant*

*witnesses failing which opportunity of plaintiff to cross-examine the defendant witness shall stand closed. It is 3:00 PM. In view of the statement made by the Ld. Counsel for the plaintiff, it appears that plaintiff despite knowledge has not appeared intentionally. There is nothing on record to suggest that plaintiff is not aware of the present proceedings especially of the order dated 4.12.2019. In these circumstances, in view of the statement of the plaintiff's counsel, pleading no instructions, I am not inclined to issue any notice to the plaintiff, but am of the considered view that it is a delaying tactics adopted by the plaintiff to frustrate recording of testimony of defendant No. 1. Hence, proceeding under Order 17, Rule 2/3 CPC matter is proceeded with, even in the absence of the plaintiff, and statement of the defendant No. 1 has been recorded. Vide separate statement, the defendant has closed evidence. Now to come up for hearing final arguments on 9.1.2020."*

**7.** It is apparent from the order passed by the learned Trial Court that the endeavour of the petitioner, who is plaintiff before the learned Trial Court is to delay the matter on one pretext or the other and whatever transpired before the learned Trial Court on 23.12.2019 was also a step in this direction at the behest of the plaintiff.

**8.** A party cannot be permitted to use the procedural laws to defeat the ends of justice. The process cannot be abused by one party so as to not only harass the other party but also create obstacles in the machinery of administration of justice. If the Court, taking into consideration the conduct of a party, comes to the conclusion that the Court is being taken for a ride by a party, then it is the duty of the Court to safeguard the interest of the other party as well as uphold majesty of law. This is exactly what has been done by the learned Court below while passing the impugned order dated 23.12.2019.

**9.** Accordingly, as this Court does not find any infirmity with the said order also, this petition being without any merit, is dismissed in *limine*.

**(Ajay Mohan Goel)**  
**Judge**

**February 29, 2020**  
*(bhupender)*