

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3048 of 2010

Date of decision : 23.12.2015

Rajesh Kumar and ors.

...Petitioners

Versus

Naresh Jain and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajinder Goyal, Advocate for the petitioners.

Mr. Sandeep Goyal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioners-plaintiffs are aggrieved of the order dated 16.01.2010, whereby application filed by LRs of Jagan Nath (arrayed as defendant No.1) for setting aside the ex parte proceedings as well as impleading them as defendants, has been allowed.

Mr. Rajender Goyal, learned counsel appearing on behalf of petitioners submits, that suit in essence is for permanent injunction and mandatory injunction and the relief has been sought only against defendant Nos.2 to 11. During the pendency of the suit, Jagan Nath had died but during his lifetime was proceeded against ex parte. The trial Court already

framed the following issue No.1:-

1. *Whether defendant No.1 who had been owner in possession of the suit property vide registered sale deed No.3501/1 and agreement dated 13.8.2003 had sold the suit property to the plaintiff.*

Legal representative moved an application for being impleaded as defendant in individual capacity, with an alternative prayer to set aside the ex parte proceedings.

The petitioner suffered statement on 24.08.2009 vide which gave up defendant No.1. Despite that trial Court has allowed the application by impleading them. He further submits that he will not press issue No.1, as noticed in the impugned order and this Court may strike off the same.

Mr. Sandeep Goyal, learned counsel appearing on behalf of respondent No.1 submits, that petitioners-plaintiffs under the garb of the suit trying to take up the issue of title, which cannot be determined in suit for permanent injunction and mandatory injunction. Once the issue of title has been set up by pleading that property had been purchased by the plaintiff from the defendants Nos.2 to 4, whereas it has been sold from defendant No.1, the presence of LRs of Jagan Nath is essential and necessary for the adjudication of the lis.

I have heard learned counsel for parties and appraised the paper book.

Once the petitioners-plaintiffs have given up the claim vis-a-vis the defendant No.1 by suffering statement on 24.08.2009, I am of the view that relief claimed in the suit which reads thus:-

“That the plaintiffs pray that a decree for mandatory

injunction directing the defendant No.2 to 12 to close the aperture shown in red colour in the site plan dated 17.5.2004 and opening towards the suit property fully detailed and described in para no.1 & 2 above and be further directed to restore the wall AB & CD in its original user and position as it was existing prior to its illegal demolition by defendant no.2 to 11 on 5/6.3.2005 and further a decree for permanent injunction restraining the defendants forever in any manner from interfering into the lawful and peaceful possession of the plaintiffs over the suit property either by creating any huddles or impediments in the construction of wall towards the northern side of the suit property adjacent to the southern site of the godown of the defendants and defendant No.1 be further restrained from alienating the suit property detailed in para no.1 & 2 above and shown in attached site plan dated 17.5.2004 in the yellow colour to any one may kindly be passed with costs in the favour of plaintiffs and against the defendants.

Any other relief for which plaintiffs are found entitled to be also awarded to them.”

would not seriously prejudiced the right or interest of the respondent, sought to be impleaded as LR of Jagan Nath.

Mr. Goyal, has suffered statement for striking off issue No.1, that he will not press issue and this Court while invoking provision of Order 14 Rule 5 feels and is of the view the presence/impleading of the LR of defendant No.1/respondent would be immaterial. Even the issue No.1 as noticed in the impugned order is ordered to be struck off.

It is made clear that petitioners-plaintiffs will not seek title in the suit.

Keeping in view the aforementioned facts, impugned order is thus not sustainable and is hereby set aside.

Revision petition stands allowed.

23.12.2015

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**(AMIT RAWAL)
JUDGE**