

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3212 of 2013
Date of Decision: September 16, 2015

Rakesh Mehra

..... Petitioner

Versus

Chander Kanta and others

..... Respondents

CR No. 3213 of 2013

Rakesh Mehra

..... Petitioner

Versus

Chander Kanta and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surender Sharma, Advocate
for the petitioner.

Mr. Ashok Giri, Advocate
for respondent Nos. 1 to 3.

Amit Rawal, J (Oral)

This order of mine shall dispose of two civil revisions bearing CR Nos. 3212 and 3213 of 2013.

The first revision petition has been filed at the instance of petitioner-defendant against the order dated 28.1.2013 (Annexure P-7) whereby the application, filed under Order 7 Rule 11 CPC, for rejecting the plaint/suit for permanent injunction, restraining the defendant No.1 from starting the intended business of sale and purchase of iron or any other commercial activities illegally and unlawfully against the provisions of Municipal Bye Laws much less without obtaining sanction from the Municipal Corporation converted the residential area into commercial shop forming part of property No. N D 121 Bikrampur, Jalandhar and as well as for mandatory

injunction to restore the nature of property in its original position i.e. residential area, has been dismissed.

Whereas, second revision petition No.3212 of 2013 is against the order, whereby, an application filed on behalf of respondent-plaintiff to bring on record the legal representatives of the deceased-plaintiff has been allowed.

Mr. Surender Sharma, learned counsel for the petitioner-defendant submits that the respondent-plaintiff Subhash died during the pendency of the suit and no cause of action viz-a-viz injunction subsisted, therefore the suit had abated, therefore, the application filed by the legal representatives, sought to be impleaded in place of the plaintiff since deceased, was also not maintainable, as no cause of action survived in their favour. He further submits that since the petitioner is a co-sharer, no injunction can be granted against a co-sharer.

Mr. Ashok Giri, learned counsel appearing on behalf of the respondent Nos.1 to 3 submits that the suit was not only for permanent injunction, but a relief of mandatory injunction had, also been sought to restore the property, in dispute, to its original nature i.e. for proposed residential area, for, which it had been allotted, therefore, cause of action would enure to the legal representatives of the deceased-Subhash. Thus, the application under Order 7 Rule 11 was not maintainable because, it was filed at the stage when the respondent-plaintiff was leading evidence.

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

As noticed above, relief sought by the plaintiff was not only for permanent injunction as well as for mandatory injunction on account of death of the plaintiff, the cause of action cannot be said to have evaporated, much less suit would abate as the cause of action would continue with regard to the premises, which was not only viz-a-viz the plaintiff, (since deceased) but even the legal representatives.

The restoration of property for the purpose it was allotted, has also been sought, therefore the said relief would continue to exist in favour of the legal representatives of the plaintiff. The petitioner-defendant cannot, as a stranger to the family, challenge the application seeking indulgence of the trial court to bring on record the legal representatives of the plaintiff. Even, no enquiry was required.

I do not find any illegality and perversity in the impugned order whereby application filed at the instance of the petitioner-defendant under Order 7 Rule 11 CPC has been dismissed and application filed at the instance of respondent-plaintiff for impleading the legal representatives of plaintiff has been allowed.

The impugned order cannot be said to have been passed without jurisdiction. The revision petitions are devoid of merit and the same are dismissed.

(AMIT RAWAL)
JUDGE

September 16, 2015
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