

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-329-2013

Date of decision: 12.1.2015

Smt. Rajesh Devi and another

..... Petitioners

Versus

Nain Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. ND Achint, Advocate for the petitioners.

Mr. Ajay Kumar Gupta, Advocate for respondents No. 1 to 7.

R.P. NAGRATH, J.

The petitioners have invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India, seeking to set aside the orders dated 14.11.2011 and 16.11.2012, passed by the learned Civil Judge (Junior Division), Gurgaon.

2. Sarbati and others filed a suit against respondent No. 9-Singh Ram on 12.10.2004, for declaration with consequential relief of permanent injunction. Respondents No. 1 to 8 are the successors of Shri Ram Narayan who died on 12.6.1995. Ram Narayan is stated to have purchased the suit land vide sale deed dated 7.1.1958 from the joint

funds of family but the sale deed was executed in favour of Singh Ram-respondent No. 9 who was minor at that time. Singh Ram, aforesaid is also the son of Ram Narayan. The petitioners filed an application under Order I Rule 10 and under Order XXII Rule 10 read with Section 151 of the Code of Civil Procedure (CPC), stating therein that defendant-respondent No. 9 had sold the suit land in favour of one Balwinder Kumar Joshi vide registered sale deed dated 20.10.2004 and the petitioners further purchased the land from Balwinder Kumar Joshi, aforesaid vide registered sale deed dated 3.10.2008, during pendency of the suit, therefore, the petitioners claimed themselves to have become owners of the suit land.

3. The learned trial Court passed the impugned order dated 14.11.2011, declining the prayer of the petitioners to be impleaded in terms of Order I Rule 10 CPC but permitted them to be associated as assignees of defendant-respondent No. 9 to continue and defend the suit, under Order XXII Rule 10 CPC. Thereafter, the petitioners applied to the learned trial Court for recalling PW-1 to PW-3 for cross-examination on behalf of defendant-respondent No. 9 as he failed to appear in the suit. In the application, it was stated that one of the witness, namely, PW-4 Karan Singh was examined after their application under Order XXII Rule 10 CPC was allowed but before that three witnesses had already been examined. Learned trial Court dismissed the aforesaid prayer of the petitioners vide impugned order dated 16.11.2012.

4. In the impugned order dated 16.11.2012, the learned trial Court observed as under:-

“After hearing the rival contentions of both the sides and after going through the record carefully, this Court is of the considered view that the applicants have no right or locus standi to set aside the ex parte proceedings passed against the defendant vide order dated 29.4.2011 because vide order dated 14.11.2011 present applicants were only allowed to contest and continue the present suit under Order 10 Rule 22 CPC. Even they were not impleaded as a party in the present suit. Their application under Order I Rule 10 CPC was dismissed by the order dated 14.11.2011. Applicants counsel failed to show any plausible reason to allow the present application. Moreover, the present application is not within the period of limitation as the present application was moved by the applicant on 12.01.2012 and defendant was proceed ex parte vide order dated 29.04.2011. It is not the case of the applicants that they had no knowledge of the said order as applicants appeared in the present case on 02.02.2007.”

5. I have heard learned counsel for the parties and perused the impugned orders as well as the paper-book.

6. I am of the view that once the petitioners were permitted to be associated as assignees of defendant-respondent No. 9 to continue and defend the suit in terms of Order XXII Rule 10 CPC, it was incumbent on

the trial Court to allow them to cross-examine the witnesses whose chief examinations had been recorded earlier. Affidavits of those witnesses are dated 14.5.2008 (Annexures P-2 to P-4). The cross-examination of these witnesses was deferred but Singh Ram was ultimately, proceeded against *ex parte* on 29.4.2011. The sale deed in favour of petitioners is of the year 2008 and, therefore, Singh Ram lost interest in the suit property.

7. The learned trial Court was not quite correct in observing that application for setting aside the *ex parte* proceedings against Singh Ram was beyond limitation because now, the petitioners are contesting the suit being assignees of Singh Ram. There is no time limit for setting aside the *ex parte* order passed against defendant, though delay may be one of the considerations whether to allow or decline the request for setting aside the *ex parte* proceedings. The trial Court was quite incorrect in observing that applicants appeared in the case on 2.2.2007, whereas the application was initially filed on 2.2.2009 and not on 2.2.2007. At that stage, the prayer was made by the petitioners to be impleaded as parties under Order I Rule 10 CPC and Order XXII Rule 10 CPC but that application was allowed in terms of Order XXII Rule 10 CPC. Soon thereafter, the instant application was filed on 12.1.2012 for permission to cross-examine the witnesses whose chief examination was earlier recorded.

8. The consequence of the petitioners being substituted as assignees of the defendant is not that the petitioner could file independent written statement of defence by setting up a new case, but they can contest on the basis of defence set up by Singh Ram. If the permission to

cross-examine the witnesses whose affidavits were earlier tendered is not granted, the very purpose of permission to petitioners to be associated in the proceedings in terms of Order XXII Rule 10 CPC would be frustrated. One of the witness who was examined after the petitioners were allowed to be associated as assignees has already been cross-examined by them. The only rider that can be put upon the petitioners would be imposition of costs because of the delay that has occurred in disposal of suit because the petitioners acquired right of ownership during the pendency of suit.

9. In view of the aforesaid discussion, the instant petition is allowed and impugned orders passed by the learned trial Court are set aside, subject to payment of ₹ 20,000/- as costs to be paid to respondents and further to pay ₹ 1000/- as costs to be paid to each of the witness to be recalled other than the plaintiff(s). The costs shall be paid to plaintiffs on the date which the trial Court shall fix on receipt of certified copy of this order.

January 12, 2015
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(R.P. NAGRATH)
JUDGE