IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3607 of 2014 (O&M)
Date of decision: 19.05.2015

Dilbag Singh

... Petitioner

versus

Joginder Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Jain, Senior Advocate with
Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Harsh Aggarwal, Advocate for the respondents.

K.Kannan, J.

The revision is against the order passed by the trial Court rejecting the application for transposition of the 5th defendant as a co-plaintiff in a suit for specific performance. An agreement of sale by the vendors stipulated the period of performance as to be done before 30.05.2006. The agreement had been in the favour of some plaintiffs of whom Joginder Singh was one of the parties and the other plaintiffs were assignees from one Dharampal. 5th defendant was also a party to the agreement of purchase reserving to himself a right to 1/4th share but since the 5th defendant did not join the plaintiffs, the latter sought for specific enforcement only in respect of all the share of property, sans the 1/4th share of 5th defendant. It appears from the recital in the body of the plaint that the plaintiffs had actually purchased a portion of the property and plaintiffs had stated that they were seeking for specific enforcement with reference to their own entitlement, for the balance property after further deducting the share of the 5th defendant. They have paid the court fee proportionate to the value of the property for which they were seeking for enforcement of the agreement. In the same plaint they had also stated that they were willing to pay the balance of sale consideration also if the share of the 5th defendant could also be conveyed in their favour.

The 5th defendant filed a written statement on 06.11.2007 contending that he is willing to have a purchase for 1/4th share and that therefore the decree could provide for specific enforcement of the whole of the remaining property covered under the agreement apart from the portion of property that had been actually sold by the vendors. The statement was filed on 06.11.2007. The transposition application however was dismissed as not pressed when the parties including the vendors had brought about the compromise and the 5th defendant felt no need to pursue the claim for transposition.

Notwithstanding the compromise the parties unanimously decided not to work out the rights under the compromise but wanted an adjudication on merits. There came to be two applications yet again at the instance of the 5th defendant. One, an application to resile from the compromise and yet another application filed by the 5th defendant for transposition as a plaintiff. The Court allowed the parties the benefit of trial discarding the compromise that had been brought about amongst themselves and had allowed the 5th defendant to prosecute his claim for a share to run parallel to the plaintiffs' claim for their share. This order was passed even while rejecting a claim for transposition.

The vendors came on revision to his Court in CR No. 517 of 2011 against the direction contained in the order of the trial Court permitting the claim of the 5th defendant to be considered parallel to the claim of the plaintiffs. This Court rejected such a direction through its order dated 10.02.2014 and held that the claim of the 5th defendant could not be treated as separate claim parallel to the plaintiffs as there is no provision in the CPC for treating the statement of one of the defendants as parallel claim with the plaintiffs. The 5th defendant has come on revision against the same order which has rejected his prayer for transposition.

While the defendants can speak in different languages taking discordant pleas in defence, the plaintiffs do not have such a liberty. They have to be heard in one single voice. The plaintiffs cannot therefore canvass for independent rights and contest the claims *inter se*. If the 5th defendant would seek for a transposition and the plaintiffs are not willing, then there exists nothing further for a trial Court to do except declining to entertain a plea for such a transposition.

All this is not to mean that there can be no decree in favour of the plaintiffs and one of the defendants. If they claim under the same agreement and if they seek for an enforcement of the terms of the agreement to their benefit. The order passed by this Court in CR No. 517 of 2011 itself has noted the law on the subject that a decree is competent to be issued in favour of the plaintiffs and the defendants and any of the defendants. Referring decision in Mukesh Kumar and others Vs. Karnal Harbans Waraiah and others AIR 2000 SC 1732. Even if the 5th defendant cannot be transposed there can be no fetter in law for the Court to grant a decree for the plaintiffs as well as 5th defendant under an agreement which is sought to be enforced. I have already referred to the fact that 5th defendant, in the statement filed on 06.11.2007 i.e. within a period of 3 years from the date of the performance namely 30.05.2006, has contended that the decree could be passed not merely with reference to the plaintiff's share in respect of the whole of the property as covered under the agreement after taking note of the property sold by the vendors but also in respect of his 1/4th share. The plaintiffs themselves had not paid the Court fee for the whole of the property and they had offered to pay Court fee for the 5th defendant's share as and when the Court directed them. The 5th defendant who filed a written statement contended that there could be a decree in respect of the whole of the property but did not pay the Court fee.

The point that would therefore arise would be whether the claim could be barred by limitation as regards the share of the 5th defendant since the Court fee has not been paid alongwith plaint vis-a-vis, the 5th defendant's share. The institution of the suit is governed by Order 4 Rule 1 CPC. Rule 1 states that every suit shall be instituted by a plaint in duplicate to the Court as such officer appoints on his behalf. Rule 1(ii) states that plaint shall comply with the rules contained in Orders 6 and 7 CPC. Rule 1(iii) states that the plaint shall not be deemed to be duly instituted unless it complies with the requirements of sub-rule 1 and II. If the suit is instituted within a period of limitation under Order 7, the effect of non-payment of requisite Court fee could only be seen in the context of how Order 7 Rule II deals with Rule 11 (b) states where the relief claimed is undervalued, the plaintiff may be required by the Court to correct the valuation within time. The proviso to Rule 11 states that the time is fixed by the court for the correction of the valuation or supplying the requisite stamp papers, shall not be extended unless the plaintiff is prevented by an exceptional circumstance of not correcting the valuation or supplying the requisite stamps. In this case, the plaintiffs had themselves stated in the plaint that they were willing to pay the Court fee for the 5th defendant's share also as and when the court directed. The 5th defendant filed a written statement on 06.11.2007 seeking for a decree in respect of the whole of the property including his 1/5th share. That was the occasion where the Court have directed either the plaintiff or the 5th defendant to pay the Court fee for the 1/5th share. The dispute on Court fee is invariably a matter between the Court and the suitor, for, the Court is a custodian of state interest for collection of revenue. It has literally no bearing to the computation of period of limitation, for, the institution will taken is done on the day when the Registry receives it in due compliance of Order 6 and Order 7. We have already examined the provisions under Order 7 Rule 11 that requires the manner of collection of insufficient Court fee within the time stipulated by the court. We have also seen that the Court had not directed the plaintiff or defendant to pay the Court fee. If the defendant was seeking for a transposition and if that was not competent, the Court ought to have directed the payment of

Court fee to consider the claim with reference to the decree also for the share of the 5th defendant. As regards the direction of payment of the court fee, the Court has stated it will be collected at the time of final decision. It is clearly an erroneous procedure. The Court fee shall be collected at the time when the parties seek for enforcement of their claim through their pleadings. The expression used Section 149 is “the Court may, in its discretion, at any stage allow the person.....”. Since there has been no appropriate direction of Court fee previously, I direct the Court fee referable to the remaining portion of property namely, the share which the 5th defendant claims, to be paid within a period of two weeks from the date of the receipt of the copy of the order. The consequences of non-payment will be the same as what is found under Order 7 Rule 11.

The order passed rejecting the application for transposition is sustained for the reasons referred to above but the 5th defendant share will be considered as forming part of the claim made by the plaintiffs in respect of the whole of the property and the proceedings will continue after giving the opportunity to the contesting defendant namely, vendors to join issues on readiness and willingness of all or any of the parties and the persons claiming under them.

The impugned order is modified and the revision petition is disposed of on the above terms.

(K.KANNAN)
JUDGE

19.05.2015
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