

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3796 of 2014(O&M)
Date of Decision: October 20, 2015

Ishwari Parshad Gupta

..... Appellant

Versus

Ram Avtar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Khurana, Advocate
for the appellant.

Mr. Arun Yadav, Advocate
for respondent No.1.

Amit Rawal, J (Oral)

The civil revision is against the impugned order dated 16.4.2014 (Annexure P-3) whereby an application filed under Order 1 Rule 10 read with Section 151 CPC, filed at the instance of respondent No.1, has been allowed.

Mr. S. S. Khurana, learned counsel appearing on behalf of the petitioner-plaintiff submits, that the plaintiff is dominus litus, as no relief has been sought against respondent No.1. Admittedly, the plaintiff and defendant No.4- respondent No.1(herein) are co-sharers. The relief has been sought against the third party, who is not a co-sharer, thus, the suit ex facie is maintainable. Respondent No.1 cannot be permitted to pursue the *lis* between the plaintiff and the private respondent nor has prima facie', been able to show that he had purchased the land from the plaintiff.

He further submits that in case, defendant is

permitted to enter, the suit may not be thrown out on the ground that suit for injunction against co-sharer is not maintainable.

Mr. Arun Yadav, learned counsel appearing on behalf of the respondent submits that defendant No.4 sought to be impleaded as party, sold the land to a third party, his client will not raise objections qua the maintainability of the suit, at the best, the issue viz-a-viz impleadment and mis-joinder or non-joinder of party can be pressed and raised.

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

It is a matter of record that the plaintiff, at the initial instance arrayed respondent No.1 as defendant No.4, thereafter vide the statement, suffered on 31.1.2014 gave up the claim against him. It is in these circumstances the respondent No.1 moved the application for impleadment. The trial court on the basis of the aforementioned facts, allowed the application and gave permission to defendant No.4 (proforma defendant) to be impleaded as a party.

In the fitness of things, I deem it appropriate, since the petitioner-plaintiff is dominus litus and nobody can thrust upon the plaintiff. Since the case is at the initial stage, the trial court would frame an issue with regard to the non-joinder/mis-joinder of necessary parties and the onus to prove the same would be on respondent No.1.

With the aforementioned observations, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits.

Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

October 20, 2015
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