

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.412 of 2015 (O&M)
Date of Decision: 19.01.2015

Mahesh Sharma

...Petitioner

Versus

Anand Parkash and another

...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. Rajesh Bansal, Advocate
for the petitioner.

R.P. Nagrath, J.

Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 03.01.2015 (Annexure P-5) passed by the trial Court whereby application under Order I Rule 10 of the Code of Civil Procedure filed by the petitioner was dismissed.

Facts giving rise to the instant petition are that respondent No.1 filed suit against respondent No. 2 for specific performance of agreement to sell dated 21.8.2006 in respect of the plot measuring 75 square yards for a consideration of ₹ 70,000/-, out of which ₹ 35,000/- was paid as part of the sale consideration. The sale deed was to be executed by 10.11.2008. The suit was filed

before the trial Court for specific performance on 03.06.2009. Respondent No.2-defendant did not appear despite service and was proceeded against ex parte. The petitioner has filed various copies of interim orders passed by the trial Court as Annexure P-6. The order dated 15.03.2012 passed by the trial Court would reveal that respondent No.2-defendant applied to the trial Court for setting aside the ex parte order dated 27.07.2009, which was dismissed by the trial Court on 06.12.2010. Respondent No.2 filed CR No.1674 of 2011 to challenge that order in this Court which was dismissed on 03.02.2012. The trial Court fixed the case for arguments but subsequently allowed the application of respondents No.1 for additional evidence and three more witnesses were examined on 10.10.2013 and the case was then adjourned for arguments on merits. In the meanwhile, petitioner filed an application under Order I Rule 10 of the CPC on 29.10.2014, which has been dismissed by the trial Court.

I have heard learned counsel for the petitioner, perused the impugned order and also the paper book.

Learned counsel for the petitioner vehemently contended that the petitioner has been cheated as pendency of the civil suit was not disclosed by respondent No.2 while executing sale deed in his favour in respect of the land for which the suit was pending. The contention of the petitioner is that respondent No.2-defendant executed an agreement to sell dated 10.12.2013 in his favour for a consideration of ₹ 3,45,000/- and had received ₹ 5000/- as part of

sale consideration. This agreement was duly registered in the office of Sub Registrar. Learned counsel further contended that respondent No.2-defendant being ex parte before the trial Court has lost his interest in the suit property and, therefore, petitioner should have been granted liberty to contest the suit as an assignee. To fortify the contention of petitioner, it was contended that petitioner has recorded an FIR No.150 dated 10.05.2014 for offences under Sections 420, 406, 468, 120-B and 506 IPC at Police Station, Sector 55, Faridabad against respondent No.2-defendant.

I am of the view that while exercising the discretion on application under Order I Rule 10 of the CPC, the Courts have to be more sensitive to the issue of disputes already involved in the case. The case before the trial Court is at the stage of arguments. Even though certain dates were obtained on behalf of respondent No.1 for arguments but for that respondent-plaintiff cannot be blamed as he is being represented by a counsel.

The agreement in question on the strength of which petitioner seeks intrusion would show that a meager amount of ₹ 5000/- was paid as part of sale consideration, though in the year, 2006 when the agreement which is set up by respondent No.1-plaintiff, an amount of ₹ 35,000/- as part of sale consideration out of ₹ 70,000/- was paid. The petitioner having come into picture after more than five years of the institution of the suit and in the circumstances of the case, I do not think that the learned trial Court committed any illegality in exercising its jurisdiction on application to

implead the petitioner as a party.

Learned counsel for the petitioner relied upon ***Sunita Devi Vs. Pawan Kumar and another, 2014(4) RCR (Civil) 705***, but that matter cropped up while the appeal against the judgement was pending and sale deed was executed during pendency of appeal. Even now the petitioner as assignee may if permissible file appeal with the leave of the appellate Court if he is aggrieved being assignee of the defendant by moving appropriate application read with Order XXII Rule 10 of the CPC. The present is not a case where the witnesses of the plaintiff were cross-examined by the original defendant so that the petitioner could have a chance to argue the case on merits. Moreover, the application was considered by this Court in ***Sunita Devi's case (supra)*** in terms of Order XXII Rule 10 of the CPC for becoming party being assignee whereas in the instant case, petitioner has applied in terms of Order I Rule 10 of the CPC. Granting permission to be impleaded as such would have resulted in de novo trial which could not have been permitted as the original defendant was unsuccessful in getting the ex parte proceedings set aside even up to this Court.

No merit. Dismissed.

19.01.2015
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(R.P. Nagrath)
Judge