

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 6194 of 2014 (O&M)
Date of decision: 18.09.2015**

Surinder Pal

... Petitioner

versus

Bharat Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Talwar, Advocate for the petitioner.

Mr. P.R. Yadav, Advocate,
for respondent Nos. 3, 5, 8, 15 to 20.

K.Kannan, J.

The revision is at the instance of the defendant who is aggrieved by an application for impleadment brought by the plaintiff of a alienee who was not included in the array of parties. The application for impleadment was ordered after the commencement of trial.

The defendant is in revision against the order to state that the statement was filed in November 2007 setting out in defense the non-joinder of necessary party, namely the alienee through a transaction which was sought to be assailed in the plaint. The contention is that there was no justification for the plaintiff to have allowed for continuance of such a suit without the necessary party and if there had been exercise of any due diligence, the plaintiff ought to have taken steps immediately on their attention being specifically drawn to the defect contained in the suit. The application was ordered in spite of the objections.

Learned counsel appearing on behalf of the petitioners states that the amendment will cause serious prejudice in plaintiff being spared of the bar of limitation which will otherwise be attracted if a fresh suit were to be filed. Further contention is that the impleadment application would necessitate an amendment application to be filed and there will be

bar for the amendment provisions under Order 6 Rule 17 if the trial of the suit had already commenced.

On the objection regarding the bar of limitation I must observe that the plaintiffs were not parties to the documents assailed and that prayer for setting aside is only a euphemism for the sale as not being binding on them. If recovery is sought within a period of 12 years from the date of such sale, there can be no bar of limitation. In this case, there is no bar of limitation that is possible by the delay in seeking for impleadment.

The objection regarding non-joinder was surely to have been taken note of by the plaintiff and steps ought to have been taken before the commencement of the trial. The situation might result that if the amendment were not allowed in favour of the plaintiff, he may be compelled to withdraw the suit and file a fresh suit, for, it would definitely constitute a defect in pleadings by not impleading the necessary party and would afford a ground for withdrawal of suit to file a fresh suit on the same cause of action. If the plaintiff would, therefore, be competent to bring a fresh suit including the person who was left out of proceedings, it is better that it is done now itself and compensated the defendants. For the inexplicable delayed action of the plaintiff, I shall visit them with cost of Rs. 20,000/- as payable to the contesting defendants as a condition precedent for allowing the application for impleadment. The order already passed is confirmed, but, with a conditional obligation to the plaintiff to pay Rs. 20,000/- as costs to the contesting defendant within a period of four weeks from the date of the receipt of the copy of the order.

The revision petition is ordered on the above terms.

(K.KANNAN)
JUDGE

18.09.2015

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