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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.6491 of 2013

Date of decision: 14.12.2015

LALITA DEVI & ORS.

.....Petitioners

Vs

GITA DEVI & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioners.

Mr. S.S. Behl, Advocate
for the respondents No.1 to 7.

1. *Whether Reporters of 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?*

RAJ MOHAN SINGH, J.

[1]. In this revision petition order dated 04.05.2013 (Annexure P-2) passed by Additional District Judge, Hisar has been assailed.

[2]. A suit for possession has been filed by the plaintiffs namely Suresh son of Norang Rai, Rajesh son of Prem Singh, Renu Bala and Anita Devi daughters of Prem son of Norang Rai.

[3] Bal Mukund had four sons namely Norang Rai, Om

Parkash, Manohar Lal and Parmanand. Norang Rai had four sons namely Raj Kumar, Suresh, Naresh and Prem. Subhash is son of Parmanand.

[4]. Vide sale deed dated 26.05.1997, defendants No.2 to 5 namely Manohar Lal, Om Parkash, Subhash and Raj Kumar sold house in question in favour of defendant No.1 Bimla Devi. Plaintiffs alleged that defendant No.1 has obtained illegal and unauthorised possession of the house in question in connivance with defendants No.2 to 4.

[5]. Plaintiffs further alleged that Raj Kumar and Naresh Kumar sons of Norang Rai are also alleged to have sold their 1/8th share in the house to defendant No.1, whereas sale by Raj Kumar and Naresh is not admitted by the plaintiffs. Plaintiffs and proforma defendants are owners and in joint possession of 7/8th share in the house in question.

[6]. Trial Court decreed the suit to the effect that sale deed dated 26.05.1997 in respect of house in dispute is set aside and the same is not binding upon the rights of the legal heirs of Norang Rai. Relief of partition was declined. Plaintiffs were held entitled to file separate suit by impleading necessary parties.

[7]. During the course of proceedings before the trial Court, learned counsel for the plaintiffs submitted that Naresh and Raj Kumar have no objection to the extent of their shares sold by

them and for that defendant No.1 or her legal representatives may get the sale deed executed to the extent of their share. In a way the sale deed dated 26.05.1997, even though was held to be not binding upon the rights of the plaintiffs, but is binding over the shares of Naresh and Raj Kumar, which was held to be having binding effect.

[8]. Infact initially memo of parties before the lower Appellate Court was different, subsequently it was amended. Raj Kumar was given up instead of showing him to be not necessary party at that stage being proforma in nature. An application was moved by the respondents No.1 to 4 for dismissal of the appeal before the lower Appellate Court i.e. by Suresh and others on the ground that all the parties have not been impleaded in the appeal which are necessary for just decision of the case.

[9]. Learned counsel for the appellant before the lower Appellate Court made a statement on 28.03.2011 and gave up respondents No.5 to 9 as unnecessary and, therefore, appeal was claimed to be not maintainable. Learned counsel for the appellants-Manohar Lal etc. claimed that under a *bona fide* mistake the respondents were left out as unnecessary parties whereas service qua them was required to be dispensed with in the appeal because they were already tried *ex parte* before the

trial Court. He contended that all the necessary parties have been impleaded and the appeal is competent. The interest of the appellants and that of the respondents, who have been left was similar and common, therefore, appeal can be decided under Order 41 Rules 4 and Rule 33 CPC will come into force wherein Court is empowered to pass an order.

[10]. Raj Kumar was only a proforma defendant in the suit and no relief was claimed against him. Similarly no relief against Sabri and Komal etc. the defendants No.1(iv) to 1(vi) as legal representatives of Bimla Devi, was claimed. The legal representatives of Bimla Devi had common interest.

[11]. Lower Appellate Court vide the impugned order allowed the application, dismissing the appeal as not maintainable.

[12]. I have perused the pleadings of the parties.

[13]. Order 41 Rule 4 CPC deals with the situation when there are more plaintiffs or more defendants than one in a suit.

The same is reproduced hereasunder:-

“4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all:-

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or the defendants may appeal from the

whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.”

[14]. Similarly Order 41 Rule 33 CPC is reproduced hereasunder:-

33. Power of court of Appeal:-

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised In favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order.”

[15] Having considered the issue with due deliberation, I am of the opinion that Order 41 Rule 4 and Rule 33 CPC squarely take care of such situation. Raj Kumar being only proforma in nature was not necessary party to the litigation. He was duly

impleaded in the appeal, but instead of making statement to dispense with his service, at that stage, he was given up by his counsel. Even if such a statement is recorded before the lower Appellate Court, then also the Court in its jurisdiction can resort to Order 41 Rule 4 CPC and Rule 33 CPC, particularly in view of the fact that the Appellate Court can decide the appeal even if one of the plaintiff or the defendant files the appeal from the whole decree.

[16]. The Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants as the case may be. Evidently, Raj Kumar was one of the defendants being proforma before the trial Court. Similarly under Order 41 Rule 33 CPC, the lower Appellate Court has ample powers to pass any decree and make any order which ought to have been passed in the facts and circumstances of the case, notwithstanding the fact that the appeal is as to part only of the decree and such power can be exercised by the lower Appellate Court in favour of all or any of the respondent party, even though such respondent or party may not have filed any appeal or objection.

[17]. The aforesaid Rule has further elaborative mechanism in decrees in cross-suits where two or more decrees are passed in one suit.

[18]. In considered opinion of this Court, such dismissal of

the appeal on the ground of non-maintainability is not justified. The lower Appellate Court ought to have decided the main controversy on merits.

[19]. Resultantly, the impugned order dated 04.05.2013 (Annexure P-2) is set aside. Revision Petition is allowed. The case is remitted back to the lower Appellate Court for decision on merits.

[20]. Both the parties are directed to be present before the lower Appellate Court on 14.01.2016.

December 14, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**