

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7007 of 2013(O&M)
Date of decision : August 19, 2015

Vidhya Nand and others

..... Petitioners

Versus

Dharamvir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

Mr. R. A. Sheoran, Advocate
for respondent No.1, 2 and 4 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?

Amit Rawal, J (oral).

The challenge in the present petition is to the order dated 5.10.2013 whereby the application filed by the petitioner under Order 1 Rule 10 CPC to be impleaded as defendant in the appeal filed against the judgment and decree of the trial court whereby suit filed by the plaintiff has been decreed.

Mr. Naveen S Bhardwaj, learned counsel appearing on behalf of the petitioner submits that by virtue of a decree passed by the trial court which is under challenge by the defendants, its right and interest in the property has been affected as the revenue record has been directed to be corrected and after having acquired the knowledge that the appeal was pending, moved an application for

impleadment. The lower appellate court has committed illegality and perversity in not accepting the application though a liberty to file a fresh suit has been granted, therefore the impugned order is not sustainable and is liable to be set aside.

Mr. R. A. Sheoran, learned counsel appearing on behalf of respondent No.1, 2 and 4 to 7 submits that the application under Order 1 Rule 10 at the appellate stage is not maintainable, as per the language under Order 1 Rule 10 CPC and rightly so the application has been dismissed.

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

The provisions of Order 1 Rule 1 CPC leaves no manner of doubt that the application under Order 1 Rule 10 CPC is maintainable only during the pendency of the suit. The argument made on behalf of the learned counsel for the petitioner that the appeal is in continuation of the suit, therefore the application would be maintainable, would not be sustainable for the reason that it is now a settled law that a person who is affected by the judgment and decree and is not a party to the same can always assail the same by taking leave of the Court. The view expressed by the trial court in declining the application, in my view is correct. However, liberty is granted to the petitioner to file a suit is not correct.

In view of what has been observed above, the present revision petition is disposed of with a liberty to the petitioner-applicant to file an appeal against the judgment and decree by seeking leave of the court stating therein the grounds .

Accordingly, the order dated 5.10.2013 to the extent of granting liberty to file a suit is modified. In case the applicant-petitioner files an appeal along with application seeking condonation of delay, the court shall decide the application for condonation of delay sympathetically.

With the aforementioned observations the revisions petition is disposed of.

(AMIT RAWAL)
JUDGE

August 19 , 2015
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