

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7018 of 2013.

Decided on:-February 06, 2015.

Boota Singh.

.....Petitioner.

Versus

Gurmail Singh and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. N.S. Sodhi, Advocate for the petitioner.

Mr. J.S. Brar, Advocate for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

A suit filed by the plaintiff, respondent herein, seeking declaration to the effect that he is owner in possession of the suit land with consequential relief of permanent injunction, is pending adjudication before the court below. In the written statement furnished by defendant No.2, petitioner herein, a preliminary objection had been taken that the suit was bad for non-joinder of necessary parties. It was, however, explained that defendant No.2, petitioner herein, was neither owner nor in possession of any portion of the suit property. Nothing more was explained.

2. Later, defendant No.2, petitioner herein, moved an application on 24.1.2011 for amendment of his written statement with a view to take specific plea that due to non-joinder of Smt. Jasmel Kaur, wife of petitioner-defendant No.2, the suit was bad. It was also explained that vide sale deed dated 15.9.2006, she had purchased the land measuring 10 Kanals 10 Marlas out of the suit property and is in possession of the same. This application was withdrawn by the petitioner, defendant No.2 on 26.8.2011 and was

dismissed as such.

3. Since by then, the plaintiff, respondent herein, had known the particulars, an application was moved by him on 07.04.2011 under Order I Rule 10 (2) CPC for impleadment of Smt. Jasmel Kaur as defendant No.3. This application was opposed tooth and nail by the petitioner-defendant No.2 claiming that the respondent-plaintiff was already in knowledge of these particulars as in another suit titled “Jasmel Kaur Vs. Malkiat Singh” filed in November, 2006 in Moga Courts, the plaintiff, respondent herein, had already made appearance and thus, the application for impleadment of Smt. Jasmel Kaur was devoid of any merit.

4. Dismissing all these aspects, the lower court allowed the application under Order I Rule 10(2) CPC filed by the respondent-plaintiff for impleadment of Smt. Jasmel Kaur as defendant No.3. It is worth notice that the application filed by defendant No.2, petitioner herein, under Order I Rule 13 CPC for dismissal of the suit for non-joinder of the necessary parties was sequelly dismissed.

5. Challenging this order in this revision petition, it is claimed that when the plaintiff was in the knowledge of ownership of Smt. Jasmel Kaur, the suit itself is malafide and does not advance the cause of justice. It is also claimed that since joining of defendant No.3 is hit by law of limitation, the impugned order is bad and thus, needs to be annulled.

6. Counsel for respondent No.1, on the other hand, has urged that the learned lower court has discussed all these aspects raised by the petitioner, defendant No.2, and even has discussed the applicability of the Limitation Act, 1963 and thus, validity and legality of the impugned order is beyond question.

7. During the course of arguments, it has clearly transpired that Smt. Jasmel Kaur impleaded as defendant No.3 vide the impugned order is also a stakeholder having purchased part of the land vide sale deed dated 15.9.2006 and thus there is no dispute that her impleadment as defendant No.3 was necessary for proper, competent and wholesome adjudication of the matter in controversy. Since Smt. Jasmel Kaur claimed to be a necessary party has already been joined as one of the defendants, application of petitioner-defendant No.2 under Order I Rule 13 CPC for dismissal of the suit for non-joining of necessary party, having become infructuous, was rightly declined.

8. So far as ground of impleadment of defendant No.3 to be barred by limitation is concerned, notwithstanding the fact that discussion has been made in the impugned order on this aspect as well, petitioner-defendant No.2 is given liberty to urge the point of limitation regarding joining of defendant No.3 in the suit, at an appropriate stage which would be considered *dehors* the observations of the trial court in the impugned order.

9. With these observations, there being no merit in the revision petition, the same is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

February 06, 2015
'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes