

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

CR No.7202 of 2015.

Date of Decision: 06.11.2015.

Jaswant Singh alias Uttar Singh

....Petitioner.

VERSUS

Tara Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.K. Dogra, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 03.08.2015 passed by learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, vide which the application of Sukhwant Singh son of Bikar Singh under Order XXII Rule 10 of the Code of Civil Procedure (for short, “the Code”) was allowed.

The facts are that petitioner Jaswant Singh alias Uttar Singh filed a suit for declaration claiming to be owner in possession being a co-sharer of the suit land (description of which has been given in the head note of the plaint) on the basis of an unregistered will dated 10.01.1979. He also assailed Mutation No.419 sanctioned on the basis of a registered will dated 29.07.1975 as illegal, null and void. The sale deeds dated 10.07.2007 and

12.07.2007 executed by respondent-defendant No.1 Tara Singh in favour of respondents-defendants No.5 and 6 were also challenged by him.

Applicant Sukhwant Singh son of Bikar Singh, resident of village Khiranwali, Tehsil and District Kapurthala purchased the suit land from defendants No.5 and 6 by virtue of registered sale deeds dated 16.07.2009. Having come to know about the pendency of the present suit, he filed an application under Order I Rule 10 of the Code before learned trial Court for being impleaded as party to the suit. As mentioned in the impugned order, his application was dismissed with liberty to file an application under Order XXII Rule 10 of the Code. Accordingly, he filed an application under Order XXII Rule 10 of the Code which was allowed by learned Additional Civil Judge (Senior Division), Sultanpur Lodhi vide the impugned order dated 03.08.2015.

The submissions made by learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submitted that respondent-defendant No.1 Tara Singh had not sold his complete share in the suit property to the applicant. He is still having interest in the property and is also contesting the suit. Moreso, no permission was obtained from the Court by respondents No.5 and 6 to sell the land during pendency of the suit to the applicant. Sale of suit property during pendency of the suit is hit by the doctrine of lispendence and therefore, applicant Sukhwant Singh was neither a necessary party to the suit nor he has any right to contest the present suit. To support his argument, learned counsel relied upon Bibi

Zubaida Khatoon vs. Nabi Hassan Saheb and another, (2004) 1 Supreme Court Cases 191 and Sarvinder Singh vs. Dalip Singh and others, (1996) 5 Supreme Court Cases 539.

To begin with, it is important to mention that in the instant Civil Revision though the petitioner has assailed the order passed on an application under Order XXII Rule 10 of the Code filed by one Sukhwant Singh which was allowed in his favour, the said Sukhwant Singh has not been impleaded as party to the petition. No person can be condemned unheard and on this very ground the petition deserves to be dismissed. The cases relied upon by learned counsel for the petitioner had their own facts.

Moreso, perusal of the impugned order shows that Sukhwant Singh had filed an application under Order I Rule 10 of the Code which was dismissed granting him liberty to file an application under Order XXII Rule 10 of the Code. Admittedly, the said order was not challenged by the petitioner and copy of the same has also not been filed alongwith the present petition. Sukhwant Singh may be a pendentelite purchaser but the plea raised by him is that the suit property was sold to him without notice regarding pendency of the present suit. He claimed to be a bonafide purchaser. Learned trial Court has rightly held that respondents No.5 and 6 having sold the suit property to Sukhwant Singh ceased to have any interest in the same whereas Sukhwant Singh has a right to protect his interest. By sale of the suit property to Sukhwant Singh, respondents No.1, 5 and 6 have assigned their right and interest in the suit property to him and he has a right to contest the suit on their behalf.

Thus, finding no illegality or perversity or a ground for intervention in the order dated 03.08.2015 of learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

06.11.2015.
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