

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

CR No.7262 of 2012

Date of decision: 27.08.2015

Jaibir

... Petitioner

Vs.

Kuldeep and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Lokesh Sinhal, Advocate and
Mr. S.C.Mahna, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for respondent No.1.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for respondent No.2.

AMIT RAWAL J.

The petitioner-plaintiff has approached this Court by challenging the order dated 20.11.2012, whereby, the application filed under Order 6 Rule 17 CPC for allowing the amendment in the plaint has been dismissed.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioner-plaintiff submits that this case has a checkered history. The petitioner-plaintiff filed a civil suit on 09.10.2007 seeking

specific performance of the agreement to sell dated 07.11.2003. After framing issues, application, at the instance of the Kuldeep Singh, for seeking amendment of the written statement to plead that sale deed dated 01.06.1999 by virtue of which he had become owner of the suit land had been set aside, in a suit filed by Ashok Sharma which was decreed vide judgment and decree dated 13.08.2007, thereafter, in pursuance to the aforementioned, judgment and decree, the sale deed in favour of Ashok Sharma has been executed and thus, Kuldeep Singh was no longer owner of the property. Simultaneously, Ashok Kumar also moved an application dated 27.10.2010 under Order 1 Rule 10 CPC for impleading him as a party to the suit, on the ground that he has become owner of the suit land by virtue of the sale deed executed in pursuance of the aforementioned judgment and decree.

Trial Court vide order dated 08.08.2011, dismissed both the applications. The aforementioned order was assailed by Kuldeep Singh and Ashok Sharma vide CR Nos.4892 and 4896 of 2011 before this Court. Vide order dated 24.09.2012, this Court allowed the aforementioned revision petitions and permitted defendant No.1- Kuldeep Singh to file amended written statement and Ashok Sharma was accordingly, allowed to be impleaded as defendant No.2, to the suit, subject to payment of costs of ₹ 10,000/-. The petitioner-plaintiff, thereafter, necessarily moved an application for seeking amendment of the plaint by adding paragraph 7-A, which reads thus:-

“7A The defendant No.2 claims to have got a sale deed executed and registered in his favour on 31st March, 2008 from Shri Sanjeev Kumar, Sunil Kumar son of late Shri Mange Ram, son of Kehar, Smt. Suneeta, Smt. Ajaywati, Smt. Sangeeta daughters of late Mange Ram and Smt. Murti Devi, wife of late Shri Mange Ram and Smt. Murti Devi, wife of late Shri Mange Ram, residents of village Lakkarpur, Tehsil and District Faridabad for an alleged consideration of Rs.5.50 lacs in execution of order dated 28.03.2008 passed by the Court of Shri Vimal Kumar Sapra, Civil Judge, Sr. Division, Faridabad in a suit for specific performance. The alleged agreement dated 28.2.96 by Ashok Kumar is a a forged and fabricated document. The alleged agreement on the very face of it has been affixed with adhesive stamps in violation of the stamp act and the rules and do not appear to have been sold by the licensed stamp vendor nor the said stamps have been cancelled as is mandatory under the stamp acts and the rules. The said violation is a punishable offence under the Act. The adhesive stamps do not appear on the very face of it of the year 1996. The judicial stamp paper picked up appears to be an old paper to show that the agreement is of the year 1996. The brand new stamps used on the impugned agreement and the

fact that it does not reflect that it has been sold by a licensed stamp vendor for the purpose it has been used clearly show that it is a forged document. On the same day the vendors had executed a Registered GPA in favour of Shri Brij Bhan, real uncle of the defendant who was authorized to sell the lands on behalf of the vendors. Shri Brij Bhan sold the suit lands on behalf of the vendors in favour of the defendant No.1 vide three registered sale deeds bearing document No.214, 2115 and 2116 dated 01.06.99 registered with the Sub Registrar, Faridabad. The said Brij Bhan was also authorized under the impugned agreement dated 28.02.96 to finalize the alleged deal between Ashok Kumar and his alleged vendors Sanjeev and others. Shri Brij Bhan who was authorized by Ashok Kumar as well as Sanjeev and others as their General Attorney executed the sale deed in favour of Kuldeep. The fact that he sold the land to his brothers son Kuldeep in 1999 is sufficient to reflect that no such prior agreement existed in favour of Ashok Kumar and that it has been fabricated after the suits filed by the plaintiff against Kuldeep and Brij Bhan for Specific Performance of the agreement of sale of leasehold rights and ownership rights after payment of full and final consideration and possession delivered to

the plaintiff in pursuance of the agreements entered into in favour of the plaintiff on 07.11.2003. The decree obtained by defendant No.2 without impleading the plaintiff during pendency of the present suit is collusive and a fraudulently obtained decree. Although the suit of Ashok Kumar filed in the year 2005 was hopefully time barred. The decree and the sale deed not executed and registered by defendant No.2 in execution of the said decree is hit by the doctrine of lis pendens and cannot effect the rights of the plaintiff in the present suit. The alleged collusive decree and the sale deed obtained on the basis of the collusive and fraudulent decree is not binding on the plaintiff who was not a party to the suit. The aforesaid sale is in violation of the injunction order in the present suit and is deemed to be void and honest in law and confers no right, title or interest on defendant No.2 in respect of suit lands.”

It is the said application which has been dismissed vide impugned order.

Mr. Lokesh, Advocate further submits that the impugned order suffers from illegality and perversity, much less, has been passed without jurisdiction, inasmuch as the amendment sought to be incorporated, in the plaint, goes to the root of the matter owing to the occurrence of the subsequent events, i.e, by permitting to Ashok

Sharma to be impleaded as defendant No.2 and defendant No.1 to file amended written statement. Thus, necessity arose to seek amendment of the aforementioned suit.

Mr. Akshay Bhan, learned Senior counsel assisted by Mr. Santosh Sharma, Advocate appearing on behalf of respondent No.2 and Mr. Adarsh Jain, Advocate appearing on behalf of respondent No.1, submit that the amendment sought to be incorporated would be of no consequence, for the reason, that plaintiff has not sought the cancellation of the sale deed executed in favour of Ashok Sharma in pursuance to the judgment and decree passed in his favour. Plaintiff has already made the averments in the suit and same have to be proved by leading affirmative evidence. Moreover, issues have already been framed and trial has also commenced.

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

Considering rival submission of the parties to the lis, I am of the view that since this Court vide order dated 24.09.2012, permitted defendant No.2 to file written statement by incorporating subsequent events by virtue of sale deed as defendant No.2 had become the owner of the suit land, in pursuance the judgment and decree passed in his favour has been executed, much less, Ashok Sharma has been permitted to be impleaded as defendant No.1. The amendment sought to be incorporated, vi-s-a-vis the sale deed in paragraph No.7-A, is essential and necessary for adjudication of the

controversy in the dispute, *dehor* of the fact that plaintiff has not sought cancellation, the aforementioned sale deed in the prayer clause.

It would be apt to refer to the relevant part of the order, whereby, defendants No.1 and 2 have been allowed to seek amendment of the written statement, much less, impleaded as defendant No.2.

*“In the instant case, Ashok Kumar Sharma is claiming under agreement dated 28.02.1996, whereas plaintiff Jaibir is claiming under agreement dated 07.11.2003, i.e. a subsequent agreement. Merely because suit by Ashok Kumar Sharma was filed after the filing of the instant suit by Jaibir, it would prima facie not make Ashok Kumar Sharma as transferee pendente lite. Consequently, argument relating to doctrine of lis pendens and judgments cited in support of the said contention are not applicable to the instant case. However, only for the sake of argument, it may be added that even transferee pendente lite has right to be impleaded as party under Order 22 Rule 10 of the Code of Civil Procedure and should ordinarily be impleaded as such, as observed by Hon'ble Supreme Court in the case of **Bibi Zubaida Khatoon** (supra). Consequently, I am of the considered opinion that Ashok Kumar Sharma is not only proper, but*

is also a necessary party to the instant suit for its complete and effective adjudication.

The matter may also be examined from another angle. If the instant suit is decided and decreed without impleading Ashok Kumar Sharma as a party to the suit, in the execution petition, Ashok Kumar Sharma would have a right to file objections, which may again have to be decided just like a suit. That would give rise to unnecessary multiplicity of litigation and delay in final adjudication of the controversy between the parties.

As regards alleged collusion of defendant with his uncle Brij Bhan and Ashok Kumar Sharma, in lease deed (Annexure R-1) and Power of Attorney (Annexure R-2), Ashok Kumar Sharma does not figure at all and does not come into picture. Consequently, at this stage, it cannot be said that transaction of alleged agreement dated 28.02.1996 set up by Ashok Kumar Sharma is prima facie mala fide or collusive transaction.

Application of defendant for amendment of written statement is also required to be allowed because judgment and decree dated 13.08.2007, which are sought to be pleaded by amendment of written statement, has been passed during pendency of the suit.

It has, however, to be noticed that both applications

-by defendant for amendment of written statement and by Ashok Kumar Sharma for impleading him as party to the suit have been filed belatedly. Ashok Kumar Sharma had filed his suit on 20.04.2005 and the suit was decreed on 13.08.2007, but he filed application for impleading him as party to the suit on 06.01.2011 only. Similarly, defendant Kuldeep, who was even party to the suit instituted by Ashok Kumar Sharma, filed application for amendment of written statement on 27.10.2010. Both the applications were thus filed after delay of more than three years even after passing of decree dated 13.08.2007. For this delay, petitioners of both the revision petitions have to be subjected to costs to compensate the plaintiff. It may, however, also be added that the suit is not at advance stage inasmuch as plaintiff's evidence also appears not to have been recorded, although issues stand framed in the suit.

For the reasons aforesaid, I find that both the impugned orders suffers from illegality and jurisdictional error. Both the applications moved by defendant and Ashok Kumar Sharma respectively deserve to be allowed, although on payment of costs. Accordingly, both the revision petitions are allowed. Both the impugned orders dated 08.08.2011 passed by the trial Court are set

aside. Application for amendment of written statement by defendant Kuldeep is allowed and he is permitted to make proposed amendment of written statement, subject to payment of Rs.10,000/- as costs precedent. Similarly, application moved by Ashok Kumar Sharma is allowed and he is ordered to be impleaded as defendant No.2 to the suit, subject to all just exceptions and subject to payment of Rs.10,000/- as costs precedent.

As prayed for by counsel for the plaintiff-respondent, trial Court is directed to decide the suit as expeditiously as possible because the suit was instituted in the year 2004 i.e. almost eight years ago.”

In view of what has been observed above, impugned order dated 20.11.2012, Annexure P-5, is set aside and the petitioner-plaintiff is permitted to file his amended plaint by incorporating paragraph 7-A (supra) in the plaint.

Accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

August 27, 2015
savita