

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7565 of 2015
Date of decision: 17.11.2015

Sunita

... Petitioner

Versus

Deepak and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Kulvir Narwal, Advocate for the petitioner.

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

ARUN PALLI J. (Oral)

Vide order being assailed dated 15.09.2015, rendered by Civil Judge (Jr. Divn.), Bahadurgarh, application moved by Naresh Kumar son of Suraj Bhan (respondent No.2), under Order 1 Rule 10 of the Code of Civil Procedure, has since been allowed and he has been arrayed as defendant to the suit. The conclusion arrived at reads as thus:

“5. The perusal of the case file shows that the respondent/plaintiff had filed the suit for specific performance against the defendant on the basis of agreement to sell allegedly executed between the parties to the suit. It has been specifically alleged by the applicant in the present application filed under Order 1 Rule 10 CPC that he has challenged the judgment and decree dated 6.12.1995 & 1.5.1999 vide which the father of defendant and defendant respectively became the owner of the

suit property by way of separate suit. Meaning thereby, the title of the defendant over the suit property has been specifically disputed by the applicant and as such, this court is of the view that in case, the plaintiff succeeds in proving the due execution & genuineness of agreement to sell and specific performance of contract is allowed in his favour, it would cause serious prejudice to the applicant and amount to denial of effective opportunity to the applicant to contest his case and controvert the claim set up by the plaintiff. The law has been well settled to the effect that a person cannot transfer better title than he himself has and as the title of defendant has been disputed by the applicant, he becomes the proper if not necessary party to the present case. More over, the relief sought by the plaintiff is a discretionary relief and as such, it becomes more essential to implead the applicant as a defendant in the present case as it would only & only help the court in deciding the present case in a just & proper manner after examining the case from all possible angles. On the other hand, no prejudice would be caused to the plaintiff as the impleadment of defendant would only bring the complete & entire facts on the case file resulting in proper adjudication of the present case.”

Concededly, father of respondent No.2 i.e. Suraj Bhan was the owner in possession of the suit property, who relinquished his interest in favour of respondent No.2, vide judgment and decree dated 01.04.1992. Accordingly, mutation bearing No.4469-V dated 09.06.1992, was also sanctioned in

favour of Naresh Kumar. Thereafter, Sube Singh, father of respondent No.1-Deepak, was alleged to have fraudulently obtained a civil court decree against Naresh Kumar. And subsequently, Sube Singh suffered a decree dated 01.05.1999 qua the suit property in favour of his son Deepak. Both these decrees; one obtained by Sube Singh against Naresh Kumar and other suffered by Sube Singh in favour of his son Deepak, were assailed by respondent No.2-Naresh Kumar. In the meanwhile, for respondent No.1 executed an agreement to sell dated 16.02.2009, in favour of the plaintiff-petitioner, the application was moved by respondent No.2-Naresh Kumar to be arrayed as party.

During the course of hearing, learned counsel for the petitioner fairly submits that the suit filed by respondent No.2-Naresh Kumar against Deepak and Sube Singh had since been decreed and consequently, the decrees dated 06.12.1995 and 01.05.1999, granted in their favour, have been set aside. Meaning thereby, as of now, respondent-Naresh Kumar holds title to the suit property. Undoubtedly, Naresh Kumar is not a party to the agreement to sell dated 16.02.2009. And obviously no relief is being claimed against him. That being so, he may not be a necessary party to the lis. But, in the wake of the position as set out above, he indeed is a proper party. And his arraignment to the suit would enable the court to arrive at a just and fair decision in the matter as also in crystallizing the

rights and obligations of the parties. And, of course, to avoid multiplicity of litigation.

That being so, no ground is made out to interfere with the order being assailed, dated 15.09.2015, in exercise of revisional jurisdiction, under Article 227 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

November 17, 2015
Rajan

(Arun Palli)
Judge