

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 856 of 2014 (O&M)
Date of decision: 31.7.2015

Harmail Singh

.. Petitioner

v.

Tirath Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sherry K. Singla, Advocate for the petitioner.
Mr. G. N. Malik, Advocate for respondent No. 1.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 13.1.2014, passed by the court below, whereby the application filed by the petitioner under Order 1 Rule 10 CPC for being impleaded as one of the defendants, was dismissed.

Learned counsel for the petitioner submitted that respondent No. 1-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 12.4.2005 against respondents No. 2 and 3 and in the alternative suit for recovery of the earnest money. In fact, respondent No. 3-Gurmail Singh had executed an agreement to sell his land measuring 25 Bighas 1 Biswa and 10 Biswansis in favour of the petitioner on 14.6.2005 and received ₹ 20,00,000/- as earnest money. The sale deed was to be executed on or before 15.6.2006. The request made by the petitioner for registration of the sale deed prior to the last date was accepted by Gurmail Singh and he appointed Tirath Singh as his attorney for the purpose. The power of attorney was given to him on 14.9.2005. Due to some error in the power of attorney, the sale deed could not be executed.

Despite requests made to Gurmail Singh, he never came to India to get the sale deed registered. The petitioner filed suit for permanent injunction on 7.1.2006. The suit was decided on 4.9.2006. Thereafter, the petitioner filed suit for specific performance of the agreement to sell dated 14.6.2005, which was decreed by the trial court on 3.9.2008. One month's time was granted to the vendor therein to get the sale deed registered. As despite deposit of balance sale consideration, the judgment-debtor failed to get the sale deed registered, in execution the court got the sale deed registered in favour of the petitioner on 14.11.2014 by appointing a Local Commissioner. Tirath Singh filed a suit challenging the judgment and decree dated 3.9.2008 passed in favour of the petitioner claiming the same to be illegal and as a result of fraud. At that stage, the petitioner came to know about the pendency of the suit filed by Tirath Singh for specific performance of agreement to sell. In that case, the petitioner filed application for being impleaded as a party to safeguard his interest. The application has been erroneously dismissed by the court below. The petitioner has interest in the property and in fact, the sale deed has been registered in his favour through a court decree, hence, he is a necessary party. The ground on which the application has been rejected cannot stand judicial scrutiny as mere delay in filing the application is not fatal. The petitioner could file the application only when he came to know about the proceedings. Non-impleadment of the petitioner as party can result in anomalous situation.

On the other hand, learned counsel for respondent No. 1 submitted that respondent No. 1 had filed the suit for possession by way of specific performance of agreement to sell on 27.3.2006, whereas the suit filed by the petitioner was later. In the suit filed by the petitioner against Gurmail Singh, he was proceeded against ex-parte. The decree passed in favour of the petitioner has been challenged by Tirath Singh by filing a separate suit in which the petitioner is a party. He can very well watch his interest there. It was further submitted that both the suits are pending in different courts.

After hearing learned counsel for the parties, in my opinion, the present petition deserves to be allowed. The petitioner certainly has interest

in the suit property as part thereof has been transferred in his favour during the pendency of the suit by way of a court decree. Even the sale deed has been registered. Under these circumstances, the delay in filing the application cannot be said to be fatal. The decision in other suit filed by respondent No. 1 challenging the ex-parte decree in favour of the petitioner can also have bearing in the present case.

For the reasons mentioned above, the impugned order dated 13.1.2014, passed by the court below is set aside. The application filed by the petitioner under Order 1 Rule 10 CPC for being impleaded as one of the defendants, is allowed. The petitioner is permitted to be impleaded as party in the suit.

Both the suits are stated to be pending in different courts. It is directed that both the suits shall be entrusted to one court and shall be kept for hearing on same date so that entire facts are before the court for reaching to a final conclusion.

The petition stands disposed of, accordingly.

(Rajesh Bindal)
Judge

31.7.2015
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