

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

CR No.258 of 2015
Date of decision : 28.07.2016

M/s Ahmedabad Bengal Roadways Pvt. Ltd.

...Petitioner

Versus

Santara and others

...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. Sudhir Aggarwal, Advocate for the petitioner.

Mr. Harish Bhardwaj, Advocate for respondent No.1.

Mr. Atul Yadav, Advocate for the respondent No.2.

AMIT RAWAL, J. (Oral)

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of petitioner-plaintiff submits that suit instituted at the instance of the petitioner-plaintiff is for declaration and consequential relief of the permanent injunction.

He submits that respondent Nos.1 and 2 in the present revision petition moved application under Order 1 Rule 10 of Code of Civil Procedure for impleading the parties on the premise that they have allegedly purchased the property vide two sale deeds Vasika No.392 dated 01.05.2013

and Vasika No.336 dated 23.04.2013 from defendant No.8 Sunil Hans son of Rattan Singh. The aforementioned application under Order 1 Rule 10 CPC was dismissed with a liberty to move the application under Order 22 Rule 10. Thereafter, the application which has been allowed vide impugned order was moved under Order 22 Rule 10 of the Code of Civil Procedure. The second application was not maintainable even otherwise respondent-defendant No.8 had already proceeded ex parte, therefore, order under challenge granting the liberty to the petitioner to implead, is totally tantamount to de novo of trial. Such practice should not be adopted and thus order under challenge is liable to be set aside.

Mr. Harish Bhardwaj and Mr. Atul Yadav, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that defendant No.8 had purchased the property from Vendor much earlier and after passing of the title, defendant No.8 did not have any title and interest in the property and, therefore, proceeded ex parte as he has no interest in view of the aforementioned fact. The suit was filed on 29.04.2013 just few days after the execution of the sale deed. It is in these circumstances, he did not appear. Even otherwise sale deed was effected before the passing of the status-quo order. By the time notice of the suit was sent, no body had been served or received the copy of the plaint. The previous order declining the application under Order 1 Rule 10 CPC granting the permission to move application under Order 22 Rule 10 CPC, therefore, it would not be considered as impediment and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the

paper book and of the view that there is no merit and force in the submission of Mr. Sudhir Aggarwal, Advocate as order declining the application under Order 1 Rule 10 CPC specifically granted the liberty to the respondent Nos.1 and 2 to move application under Order 22 Rule 10 CPC. Sale deed is of 23.04.2013 whereas suit has been filed on 29.04.2013. Obviously by the time when the copy of the plaint have reached to defendant No.8, he was not having title, therefore, he did not appear. Accordingly, proceeded ex parte. In my view allowing of the application owing to the acquisition of the title and interest by way of assignment, the respondent Nos.1 and 2 is essential and proper party to be impleaded and should be granted opportunity to contest the suit.

For the foregoing reasons, I do not find any illegality and perversity in the order under challenge.

Order cannot be said to have been passed without jurisdiction.

Dismissed.

28.07.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned: Yes

Whether reportable:- Yes/No