

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

Civil Revision No.3102 of 2014
Date of decision: November 23, 2016

Raj Pal alias Leelu

...Petitioner

Versus

Smt. Ratti & others & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sanjay Vij, Advocate for the petitioner.
Mr. Lokesh Vohra, Advocate for
Mr. Sandeep Sharma, Advocate for respondents No.1 & 2.

Rajan Gupta, J.

Present revision petition is directed against the order dated 28.02.1914, passed by Additional District Judge, Gurgaon, whereby application filed by the petitioner for impleading Kaushalya Devi as respondent, has been dismissed.

Learned counsel for the petitioner has assailed the order. He urged that during pendency of appeal before the first appellate court, respondents no.1 to 3 sold land measuring 4 Kanals to Smt. Kaushalya Devi, thus, she is a necessary party to the litigation. According to counsel, non-impleadment of said Kaushalya Devi would lead to multiplicity of litigation. He has placed reliance on judgment reported as ***Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and others, (2013) 5 Supreme Court Cases 397.***

Plea has been vehemently opposed by learned counsel

appearing for respondents No.1 & 2. According to him, impleadment of Kaushalya Devi will have adverse impact on the fate of the appeal.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears, respondents No.1 to 3/plaintiffs filed a suit for declaration with consequential relief of permanent injunction against the petitioner and proforma respondents No.4 to 7, claiming 1/5th share in the suit land, which is stated to be ancestral coparcenary property. They also prayed that mutations sanctioned in favour of the respondents be declared null and void. A decree for permanent injunction restraining the defendants from interfering/changing the nature of property and from alienating or transferring the same, was also sought. The suit was decreed ex-parte by the trial court on 30.10.2012. The petitioner alongwith proforma respondents filed appeal. When appeal was fixed for hearing arguments, instant application for impleading Kaushalya Devi was moved claiming that she is necessary party to the litigation, which has been dismissed by the first appellate court on 28.02.2014.

I find no infirmity with the order. It is evident that suit filed by the plaintiffs was decreed ex-parte, vide judgment and decree dated 30.10.2012. It was held therein that plaintiffs were owner in possession to the extent of 1/5th share in the suit land, which was ancestral coparcenary property. Relief of injunction was also granted. Petitioner alongwith other co-defendants filed appeal before the appellate court. During the pendency of the appeal, plaintiffs are stated to have executed two sale deeds dated 7.5.2013 and 9.5.2013 in favour of Kaushalya Devi

in respect of 03 Kanals 01 Marla and another chunk of 04 Kanals of land. As the petitioner came to know about this, he moved the instant application seeking to implead Kaushalya Devi as a party to the litigation. The plea was rejected by the court below on the ground that principle of *lis pendens* would be applicable to the case and Section 52 of the Transfer of Property Act would be attracted. There can be no dispute about the proposition of law laid down in judgment in *Thomson Press's case (supra)*. However, in the instant case, application for setting-aside the ex-parte proceedings is still pending before the lower appellate court. The fate of same is not known at present. Besides, it appears that case was also referred to Mediation and Conciliation Centre by the appellate court to explore possibility of amicable settlement, it being a family dispute. I am of the considered view that there is no merit in the plea for impleadment of Kaushalya Devi in the array of parties, as prayed for. The present revision petition is without any merit and same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

November 23, 2016
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No