

CR-3875-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-3875-2015

Date of decision : 08.01.2016

Gurdhiyan Singh

... Petitioner

Versus

Ajaib Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Gupta, Advocate
for Mr.Mohit Jaggi, Advocate
for the petitioner.

None for the respondent.

REKHA MITTAL. J.

The present petition lays challenge to order dated 20.02.2015 passed by the Additional Civil Judge (Senior Division), Patiala whereby the application filed by the petitioner (plaintiff) for impleading Jagdeep Singh as respondent and consequently making amendment in the plaint to give challenge to Vasika No.1425 dated 27.11.2012 in respect of the suit land.

The facts relevant for disposal of the present petition are that the petitioner filed a suit for possession by way of specific performance of agreement to sell dated 28.05.2012 executed by respondent No.1 in respect of land measuring 11 bighas detailed in head note of the plaint.

Respondent No.1 put in appearance before the trial Court in pursuance of

the notice and after availing several opportunities to file the written statement did not file the same and rather absented and was proceeded against ex-parte. The petitioner filed an application for impleading Jagdeep Singh son of Ajaib Singh (respondent) and to amend the plaint on the premise that he has come to know that the suit land has been transferred by respondent No.1 in favour of his son Jagdeep Singh vide Vasika No.1425 dated 27.11.2012, executed by Sh. Ajaib Singh after entering into an agreement to sell dated 28.05.2012 in favour of the petitioner.

The learned trial Court dismissed the application primarily on the ground that the petitioner has not established that despite exercise of due diligence, he could not raise the matter before commencement of trial on 08.03.2013, the date on which the suit was instituted.

The aforesaid observation of the trial Court is in complete contradiction to the plea of the petitioner as he alleged that it was only in November 2013 he came to know that the defendant executed a transfer deed in favour of his son Jagdeep Singh. This apart, defendant / respondent had put in appearance in the suit, availed certain dates for filing of written statement but later absented from the proceedings. The ex-parte evidence of the petitioner is yet to start in the case, therefore, the trial in the case has not commenced as yet. The learned trial Court has neither correctly appreciated the averments made in the application nor the relevant provisions of CPC, thus, dismissal of the application is the

result of complete non-application of mind and gross error committed by the court. As the vendor of the petitioner allegedly executed a sale deed in favour of his son on a date subsequent to the agreement to sell propounded by the petitioner, challenge to the said sale by impleading the vendee under the sale deed is necessary for complete and effective adjudication of the matter in controversy. In this view of the matter, the impugned order cannot be allowed to sustain and accordingly set aside. As a consequence, the application filed by the petitioner for impleading Jagdeep Singh as defendant No.2 and to amend the plaint is allowed.

For the reasons aforesaid, the petition is allowed with the aforesaid observations. After filing of the amended plaint by the petitioner, the trial Court would serve a notice upon the newly added defendant and thereafter proceed with the case in accordance with law.

(REKHA MITTAL)
JUDGE

January 08, 2016.
Davinder Kumar