

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

CR No.4299 of 2015
Date of decision : 29.07.2016

Khushal Chand

...Petitioner

Versus

Mohinder Gir 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. Sushil Kumar Verma, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff in Civil Suit No.23-C of 2011 titled as Khushal Chand Vs. Mohinder Gir etc., is aggrieved of the impugned order, whereby application for consolidation of the present suit with Civil Suit No.202-C of 2009 titled as Khushal Chand Vs. Dharam Chand, has been dismissed and trial of the suit bearing No.23-C of 2011 has been stayed by invoking the provision of Section 10 CPC.

Learned counsel appearing on behalf of petitioner submits that prior to filing of the suit No.23-C of 2011, plaintiff had already filed a suit bearing No.202-C of 2009 claiming following relief:-

“Suit for declaration to the effect that the plaintiff has

become owner in possession of the land measuring 73 kanal 0 marlas comprised in khewat No.394/356 khatuni No.518 sq. No.233, Killa No.10(8-0), 11/2 (2-4), 12 (8-0), 13/1 (2-4), 19/2(5-0), 20/1 (3-0), 20/2 (5-0), 21 to 23 (24-0), sq.no. 244 Killa No.3(9-16) and land comprised in Khewat No.757/665 Khatuni No.963 Sq No.233 Killa No.11/1 (5-16) as per jamabandi 2006-2007 situated in Village Jodhkan Tehsil & District Sirsa, on the basis of the family settlement which took place between the plaintiff and defendant No.1 in April 2007 and the defendant No.1 has no concern or connection with the suit land in any manner/capacity, but the revenue records and revenue entries showing the defendant No.1 to be the owner of the above suit land are wrong and incorrect and are liable to be corrected in favour of the plaintiff and during the pendency of the suit the defendant No.1 Dharamchand transferred the suit land in favour of Mohinder Gir and Kishan Chand defendants No.2 and 3 by way of sale deed no.3229 dated 19.2.2010 and the abovesaid sale deed is a paper transaction and is sham transaction and has been executed during the pendency of the suit and Mohinder Gir and Kishan Chand have the full knowledge of pendency of the suit and by way of collusion with the abovesaid persons Dharamchand transferred the abovesaid suit land in favour of Mohinder Gir and Kishan Chand only to defeat the claim of the plaintiff and defendant No.2 and 3 have also succeeded in getting the mutation No.6490 dated 24.2.2010 on the basis of abovesaid sale deed which is also wrong and incorrect and against law and facts and the plaintiff is not bound by the sale deed and mutation and the revenue entries in favour of Mohinder Gir and Kishan Chand on the basis of the abovesaid sham and paper transaction are wrong and incorrect and on the spot the

plaintiff is in possession of the abovesaid land and the possession of the plaintiff can be verified by way of appointment of local commission and the defendant no.1 and defendant no.2 and 3 may also be restrained from interfering into the possession of plaintiff over the suit land and the dhani constructed in the suit land comprised in sq. no.233, Killa No.19/2 consisting of 5 rooms, one kitchen and shed of 40' x 20' for the keeping the buffaloes and cows and for the purpose of storing the Turi etc. and as a consequential relief of permanent injunction restraining the defendants from alienating the aforesaid property in any manner by way of lease, mortgage, license, lien or transferring of possession to any other person in any manner on the basis of evidence of every description oral and documentary.”

During the pendency of the suit, defendant No.3 had sold the property to the defendant in a subsequent suit and, therefore occasion arose to file the suit claiming relief thus cause of action and date of institution are different and matter cannot be brought within the parameters/provision of Section 10 of the Code of Civil Procedure and, therefore, order under challenge thus is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner and appraised the paper book.

During the course of submission, this Court confronted the petitioner as to any steps having been taken in the earlier instituted suit i.e. 202-C of 2009 for amendment of the plaint, answer is in positive. Amendment was allowed and the first suit has been decreed. Sale deed was during the pendency of the suit, would always be hit by doctrine of lis

pendense. There is no occasion for the petitioner-plaintiff to institute the suit. Once previous suit has been decreed in my view would not be maintainable though it has been stayed.

I do not find any illegality and perversity in the order.

No ground for interference is made out.

Dismissed.

29.07.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No