

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5273 of 2013(O&M)

Date of Decision:14.1.2016

Manjit Singh

---Petitioner

vs.

Sukhdev Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. G.S.Sirphikhi, Advocate
for the petitioner

Mr. Sunil Chadha, Senior Advocate
with Ms. Suchi Verma, Advocate
for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal,J.

By invoking the provisions of Article 227 of the Constitution of India, the petitioner has assailed the order dated 18.7.2013 (Annexure P-5) passed by the Additional Civil Judge (Senior Division) Amritsar whereby the application filed by the petitioner under Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure (for short "CPC") for

impleading the legal representatives (in short “Lrs”) of Man Singh and the application under Order IX Rule 7 read with Section 151 CPC have been dismissed.

Sukhdev Singh, respondent filed a suit against Man Singh alias Gurnam Singh (since deceased) father of the petitioner for possession by way of specific performance of the agreement to sell dated 17.5.2010 for sale of land measuring 19 kanals 2 marlas, detailed therein. Further prayer has been made for issuance of permanent injunction restraining the defendant from alienating, selling, mortgaging or transferring the suit land in any manner except to the respondent and in the alternative, prayer has been made for recovery of Rs. 35,00,000/- towards damages as per terms and conditions of the agreement to sell. In the said suit, the defendant was proceeded against ex parte on 16.4.2012. The petitioner filed an application under Order XXII Rule 4 read with Section 151 CPC for impleading him as Lr of Man Singh on the plea that Man Singh passed away on 25.8.2012 when he was living in America. The application was filed on 10.10.2012. Another application was filed on 11.2.2013 for setting aside the ex parte proceedings initiated against said Man Singh in April 2012.

The learned trial court decided both the applications by a common order dated 18.7.2013, impugned in the present petition.

Counsel for the petitioner contends that as Man Singh defendant passed away on 25.8.2012, the application by the petitioner for impleading legal representatives of deceased Man Singh filed within the period of limitation, has been wrongly and illegally dismissed by the trial court. It is further argued that the Court ordered ex parte proceedings

against Man Singh in April 2012 and before Sh. Man Singh could initiate an action to get those proceedings set aside, he unfortunately passed away on 25.8.2012 in America. It is further argued that as the respondent has set up an agreement to sell purported to be executed by Man Singh @ Gurnam Singh (since deceased), the petitioner and other Lrs of Man Singh are entitled to contest the proceedings in order to protect their property, inherited by them on the death of Man Singh.

Counsel for the respondent has supported the impugned order with the submissions that the learned trial court has taken a serious note of conduct of the petitioner as he is already pursuing a suit for declaration on the premise that agreement to sell dated 17.5.2010 (subject matter of the present suit) is illegal, null and void and fabricated. In the said suit, the respondent filed a written statement dated 5.12.2011 disclosing that he has already filed a suit for specific performance of the said agreement. It is further argued that the learned trial court has rightly held that in case the petitioner was interested to join the proceedings, he should have filed application under order I Rule 10 CPC immediately after getting knowledge of pendency of the suit, therefore, he cannot be allowed to join proceedings at such a belated stage.

I have heard counsel for the parties, perused the records and of the opinion that the order passed by the trial court is the result of complete non-application of mind and mis-construction of the relevant provisions of CPC, therefore, cannot be allowed to sustain.

Counsel for the respondent has been fair enough to concede that the application filed by the petitioner under Order XXII Rule 4 CPC

for impleading the Lrs of Man Singh was filed within the stipulated period of limitation. There is no denial that Man Singh (defendant) passed away on 25.8.2012. The petitioner being the Lr of Man Singh was well within his right to file an application for brining him alongwith other Lrs on record to pursue the litigation. The learned trial court committed a gross error by dismissing the application merely because the petitioner could earlier file an application under Order I Rule 10 CPC for impleading him as a party. The application under Order I Rule 10 and under Order XXII Rule 4 have entirely different purpose to serve and there are different yardsticks for allowing or disallowing the application filed under different provisions. That being so, the order passed by the trial court dismissing the application under Order XXII Rule 4 CPC is patently illegal and accordingly set aside.

So far as the application under Order IX Rule 7 CPC is concerned, Man Singh was proceeded against ex parte in April 2012 and passed away in August 2012. The application for impleading Lrs was filed in October 2012. The application for setting aside ex parte proceedings could be filed by Lrs only after their impleadment. Even otherwise, if there is some delay in filing the application for setting aside the ex parte proceedings, the same may not be taken seriously unless the applicant has a mala fide intention to delay the proceedings. The rules of procedure are handmaid of administration of justice and are to be applied to enhance the cause of justice and not to thwart it. The trial court appears to have given complete go by to the aforesaid principle of law while rejecting the application for setting aside the ex parte proceedings. One thing more to be added here is that as per admitted position, the petitioner has already

challenged the agreement to sell dated 17.5.2010 by filing a separate suit before death of Man Singh. Under these circumstances, it was all the more necessary to permit the petitioner to contest the proceedings for complete and effective adjudication of the matter in controversy. In this view of the matter, the order passed by the trial court is illegal and, therefore, untenable.

For the reasons aforesaid, the petition is allowed, the impugned order dated 18.7.2013 is set aside and as a consequence, the application under Order XXII Rule 4 read with Section 151 CPC for impleading the Lrs of Man Singh is allowed and the persons mentioned in para 2 of the application are brought on record as Lrs of Man Singh for the purpose of suit pending before trial court. The petitioner and other Lrs of Man Singh are allowed to join the proceedings from the stage, Man Singh was proceeded against ex parte by the learned trial court.

However, nothing stated in this order shall prejudice rights of either of the parties in the pending suit.

The Registry is directed to send a copy of the order in the name of Bipandeep Kaur, the then Additional Civil Judge (Senior Division), Amritsar with a copy to the District Judge where the officer is posted at present.

(Rekha Mittal)
Judge

14.1.2016
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