

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5727 of 2015
Date of Decision:31.3.2016

Manjit Kaur

---Petitioner

vs.

Jaswinder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.N.S.Dadwal, Advocate
for the petitioner

None for respondent No. 1

Mr. Gurcharan Dass, Advocate
for respondent No. 2

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 Article 227 of the Constitution of India, the present petition has been directed against order dated 27.5.2015 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Jagraon whereby application filed by respondent No. 2 for impleading as a defendant in the civil suit titled “Manjit Kaur vs. Jaswinder Singh” has

been allowed.

The brief backdrop of this case is that Manjit Kaur wife of Basakha Singh petitioner has filed a suit for possession by way of specific performance of the agreement to sell dated 9.5.2013 purported to be executed by Jaswinder Singh, respondent No. 1 in respect of a house, detailed in the head note of the plaint (Annexure P-1). Manjit Kaur wife of Jaswinder Singh (respondent No. 2) filed an application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (in short “CPC”) for impleading her as defendant and the same has been allowed by the learned trial court vide order impugned in the present petition.

Counsel for the petitioner would contend that as respondent No. 2 is neither owner of the suit property nor privy to agreement to sell dated 9.5.2013 executed by Jaswinder Singh respondent No. 1 for sale of suit house for a sale consideration of Rs. 11,00,000/-, respondent No. 2 is neither a necessary nor a proper party for complete and effective adjudication of the matter in controversy. It is further argued that respondent No. 2 cannot be allowed to enlarge scope of suit instituted by the petitioner by pleading and proving her right of residence in the suit property nor the petitioner who is a dominus litis can be forced to implead respondent No. 2 as a party in the present proceedings. It is argued with vehemence that the learned trial court committed a serious error rather illegality in upholding plea of respondent No. 2 to be impleaded as a party in the present suit.

Counsel for contesting respondent No. 2, on the contrary, has supported the impugned order with the submissions that Manjit Kaur

respondent filed a petition/complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short “2005 Act”) and in those proceedings, Jaswinder Singh respondent suffered statement that he will not alienate the property without legal necessity and consent of Manjit Kaur, his wife. He will not dispossess Manjit Kaur illegally and forcibly and keep his wife in a decent manner and shall not do any cruelty to Manjit Kaur respondent No. 2. Manjit Kaur respondent No. 2 in view of statement of Jaswinder Singh recorded on 23.7.2014 in the aforesaid proceedings withdrew the petition. In case respondent No. 2 is not permitted to be impleaded as a party, she would not be in a position to protect her right and interest in the suit house, therefore, she being a necessary party has been rightly allowed to be impleaded as a co-defendant in the suit filed by the petitioner.

I have heard counsel for the parties, perused the paper book more particularly the impugned order (Annexure P-5), statement and order dated 23.7.2014 in the proceedings under Section 12 of the 2005 Act.

Before adverting to the submissions made by counsel for the parties, it is pertinent to point out that during course of hearing, counsel for respondent No. 2, in response to a query raised by the Court, has asserted that as Manjit Kaur respondent No. 2 has been allowed to be impleaded as a co-defendant, she has the right to file a written statement and contest the proceedings in exercise of her independent right by invoking the provisions of 2005 Act.

The question that arises for consideration is 'whether respondent No. 2 can be allowed to enlarge the scope of suit for possession

by way of specific performance filed by the petitioner by raising certain claims inter se the defendants'. The answer, at the outset, appears to be in the negative.

Order 1 Rule 10 CPC deals with suit in the name of wrong plaintiff. A relevant extract from Rule 10 CPC reads as follows:-

10. Suit in name of wrong plaintiff.- (1)

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XXX

XXXX

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

The words “whose presence before the court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit” are germane to the matter in issue. Concededly, respondent No. 2 is neither owner of the suit property nor she is a privy to the agreement to sell executed by Jaswinder Singh, owner of suit house. Even if respondent No. 2 can claim any right of residence or maintenance qua the suit house, she has to enforce the said right by taking recourse to appropriate proceedings by invoking the relevant provisions of a statute. Further, if suit filed by the petitioner is decreed and

she is held entitled to possession of the suit house, respondent No. 2 may be entitled to file objections in execution proceedings that may be filed by the petitioner to execute a decree passed in her favour. The mere fact that after institution of the suit by the petitioner, Jaswinder Singh suffered a statement dated 23.7.2014, that may be the result of collusion between the husband and wife, to cause prejudice to the petitioner is not sufficient to hold that respondent No. 2 is either a necessary or proper party for complete and effective adjudication of the matter in controversy. In this view of the matter, I find merit in the submissions made by counsel for the petitioner that the impugned order suffers from patent illegality and liable to be set aside.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the application filed by respondent No. 2 under Order 1 Rule 10 CPC is dismissed.

(Rekha Mittal)
Judge

31.3.2016
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