

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

CR No.63 of 2014(O&M)

Date of decision:9.8.2016

Gurpreet Singh

....Petitioner

VERSUS

Jai Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.L. Bajaj, Advocate for the petitioner.

Mr. H.S. Bhullar, Advocate for respondent No.2.

REKHA MITTAL, J.

The present petition has been directed against order dated 09.10.2013 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Faridkot whereby an application filed by Maghar Singh son of Bikkar Singh under Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleading him as a party in proceedings under Order 9 Rule 13 CPC filed by Gurpreet Singh-petitioner to set aside the ex parte judgment and decree dated 22.07.2008 passed in civil suit No.9 of 02.05.2012/22.08.2009 has been allowed.

Counsel for the petitioner has submitted that Jai Singh – respondent No.1 filed a suit for specific performance of an agreement to sell purported to be executed by Gurpreet Singh and the said suit culminated in ex parte decree dated 22.07.2008. Jai Singh – decree holder filed an application for execution of the decree and in those proceedings, a sale deed was executed in favour of Jai Singh through process of the Court in pursuance of the ex parte decree dated 22.07.2008. Gurpreet Singh –

petitioner filed an application under Order 9 Rule 13 CPC for setting aside the ex parte decree. In those proceedings, Maghar Singh – respondent No.2 filed the instant application under Section 151 CPC for being impleaded as a respondent and the same has been wrongly and illegally allowed by the trial Court. It is argued with vehemence that as Maghar Singh was not party to the ex parte decree sought to be set aside by taking recourse to appropriate remedy under Order 9 Rule 13 CPC, Maghar Singh is neither a proper much less a necessary party to the proceedings at present pending before the trial Court. In support of his contention, he has referred to judgments of this Court Vivek Malhotra Vs. Smt. Ajit Kaur Gill and others, 2016(2) RCR (Civil) 65 and Jaswinder Kaur Vs. Avtar Singh, 2000 (4) RCR (Civil) 604.

Counsel for the contesting respondent- Maghar Singh, on the contrary, has supported the impugned order with the submissions that in the pending execution proceedings, a compromise was effected between Jai Singh and Gurpreet Singh on 12.12.2008, compromise deed was executed, statement of parties were recorded in the Court, possession of land was delivered to Jai Singh. As per compromise, Jai Singh got entered and sanctioned mutation and khasra girdawari was also recorded in his favour. Thereafter, Jai Singh sold land measuring 16 kanal 19 marlas to Maghar Singh for Rs.15,40,000/- vide registered sale deed dated 08.03.2011 and possession was delivered to the applicant. Subsequent thereto, Gurpreet Singh – petitioner/ JD in order to play fraud with the respondent/applicant in connivance with Jai Singh filed the application under Order 9 Rule 13 CPC. It is further argued that allegations with regard to collusion between the petitioner and respondent No.1 is manifest

from the statement dated 14.06.2012 got recorded by Jai Singh, vendor of the respondent, whereby he stated that the ex parte decree be set aside, the main suit be dismissed and the sale deed be treated as cancelled. It is vehemently argued that as Gurpreet Singh and Jai Singh have joined hands to cause loss to the respondent, the trial Court has rightly allowed the application by appreciating the facts on record in right perspective. In addition, it is submitted that a serious prejudice is likely to be caused to the respondent in case he is not allowed to contest the proceedings.

I have heard counsel for the parties, perused the paper-book and bestowed my consideration to the rival submissions in the light of the judgments cited at bar.

Maghar Singh – respondent No.2 is transferee of land measuring 16 kanals 19 marlas, subject matter of agreement to sell propounded by Jai Singh and purported to be executed by Gurpreet Singh – petitioner on the basis whereof, an ex parte decree dated 22.07.2008 was passed in favour of Jai Singh and in execution of the said decree, sale deed qua suit land was executed in favour of Jai Singh through process of the Court. Concededly, respondent- Maghar Singh is not a party to the civil suit instituted by Jai Singh against Gurpreet Singh that was decided ex parte. The mere fact that Maghar Singh purchased the land in question from Jai Singh on the basis of sale deed executed in his favour subsequent to the sale deed executed in favour of Jai Singh through process of the Court is not sufficient to grant his prayer that he is either proper much less a necessary party to the proceedings under Order 9 Rule 13 CPC. Counsel for the contesting respondent is not in a position to convince this Court as to how the proceedings under Order 9 Rule 13 CPC cannot be decided

completely and effectively in absence of Maghar Singh. This apart, even if Jai Singh has got recorded his concession for setting aside ex parte judgment and decree, the trial Court is neither bound to accept the statement nor is debarred from examining the relevant materials on record for deciding as to whether it is a fit case to allow prayer of the petitioner for setting aside ex parte decree.

The plea of respondent No.2 that the application for setting aside ex parte decree was filed subsequent to purchase of suit land in order to play fraud upon him is highly misconceived and merits rejection. Indisputably, the application under Order 9 Rule 13 CPC was filed in the year 2009 but sale deed set up by the respondent was executed on 08.03.2011, rendering him a transferee *pendente lite*.

A similar issue cropped up before this Court in Vivek Malhotra's case (supra) wherein Vivek Malhotra sought to be impleaded as a party in the proceedings for setting aside the ex parte decree initiated at the instance of Ajit Kaur Gill on the premise that he had purchased the suit property from Preet Pal vide registered sale deed dated 03.05.2013, paid the entire sale consideration and he feared that Preet Pal may not defend the case properly. Therefore, filed an application under Order 1 Rule 10 CPC to be impleaded as a party. The application was dismissed by holding that transfer in favour of the applicant was made despite a stay order from the Court and the transferee *pendente lite* is neither a proper nor necessary party in proceedings under Order 9 Rule 13 CPC. This Court, in para 16 and 17, has observed that the moot point for determination is whether the petitioner has any accrued or vested right to oppose the application of Ajit Kaur Gill for setting aside ex parte decree in favour of Preet Pal drawn on

22.12.2012, filed under Order 9 Rule 13 CPC for the reason that he had entered into an agreement to sell with Preet Pal on 22.04.2013 which was converted into a sale deed on 03.05.2013. It was held that the order passed by the trial Court is not open to correction in its conclusion which in many words is that at the present stage, he the petitioner has insufficient locus standi to enter the proceedings pending under Order 9 Rule 13 CPC. The two stages are clearly distinct: one, is the stage when the ex parte judgment and decree stand but have been made inoperable by an interim stay order, the petitioner being a purchaser subsequent to the order of stay. The second stage can arise only in the event of success of the application under Order 9 Rule 13 CPC which stage is not reached yet. That bridge is not reached for the petitioner to cross. When that bridge is reached, it will always be open to the petitioner to apply under Order 1 Rule 10 CPC in which event the trial Court would examine his application and consider the same on merits in accordance with law.

The only difference, in the case at hand and that in the referred authority is that there was no stay against alienation of property in the proceedings under Order 9 Rule 13 CPC. As has been noticed hereinbefore, but for the sake of repetition, mere fact that Jai Singh has recorded a concession for setting aside ex parte proceedings, is not sufficient to implead respondent No.2 as a party in the proceedings under Order 9 Rule 13 CPC. Of course, in case the ex parte judgment and decree is set aside by the trial Court, respondent No.2 would be at liberty to file an appropriate application for being impleaded as a party in the suit and the application would be decided by the trial Court in accordance with law.

In view of the above, trial Court committed a serious error rather illegality in allowing impleadment of respondent No.2 as a party in the proceedings under Order 9 Rule 13 CPC. That being so, the impugned order cannot be allowed to sustain and accordingly set aside. However, nothing stated in this order shall prejudice adjudication of the proceedings on merits.

AUGUST 9, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no