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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 07.11.2016

1. CR-6696-2014 (O&M)

Randhir Singh and others ... Petitioners
Versus
Singh Ram and others ... Respondents

2. CR-6222-2014 (O&M)

Kehar Singh and others ... Petitioners
Versus
Singh Ram and others ... Respondents

3. CR-6753-2014 (O&M)

Sher Jang Singh and another ... Petitioners
Versus
Kesar Devi and others ... Respondents

4. CR-6855-2014 (O&M)

Nasib Singh and others ... Petitioners
Versus
Kesar Devi and others ... Respondents

5. CR-6856-2014 (O&M)

Bajit Kaur ... Petitioner
Versus
Kesar Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Kshetrapal, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for the petitioner(s) in CR Nos.6753, 6855 & 6856 of 2014.

Mr. S.S. Dinarpur, Advocate and
Mr. Subhash Godara, Advocate
for the petitioner(s) in CR Nos.6696 & 6222 of 2014.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for the petitioners in CR Nos.6753, 6855 & 6856 of 2014.

Mr. A.K. Khubbar, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

CM-14696-CII-2015 IN CR-6696-2014

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of respondent No.5, namely, Om Parkash are permitted to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

CM-14697-CII-2015 IN CR-6696-2014

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of respondent No.8, namely, Kamla Devi are permitted to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

CM-10122-CII-2015 IN CR-6222-2014

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of

respondent No.5, namely, Om Parkash are permitted to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

CM-10123-CII-2015 IN CR-6222-2014

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LR's of respondent No.8, namely, Kamla Devi are permitted to be brought on record for the purpose of prosecuting the revision petition.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of five revision petitions at the instance of the newly added defendant(s) in a civil suit instituted by respondent Nos.1 and 2 seeking declaration to the effect that they are the owner in possession of the land in dispute on the premise that the land had already been redeemed in the year 1930 i.e. after remand order dated 03.01.2012 passed in RSA No.624 of 1980. These revision petitions have a little chequered history. The respondent Nos.1 & 2/plaintiffs instituted the suit claiming the aforementioned relief. The said suit was dismissed by the trial Court in the year 1975. However, the lower Appellate Court vide judgment and decree dated 28.01.1980 allowed the same. The aforementioned matter reached upto this Court, as indicated above, and the same had been remanded back to the trial Court granting the liberty to respondent Nos.1 and 2/plaintiffs to seek the redemption instead of declaration. During the interregnum, certain events as per the petitioners have taken place that by virtue of various judgments and decrees, much less,

sale deeds, respondent Nos.1 and 2/plaintiffs have transferred the major part of the area to the present petitioners-defendants and more. It is, in this background of the matter, an application was moved by the petitioners for impleading them as co-plaintiffs but the same was dismissed by the trial Court. In this process the matter reached up this Court in CR No.6161 of 2012 and many others. This Court vide order dated 27.05.2014 instead of allowing the application of the petitioners to be impleaded as co-plaintiffs, allowed them as defendants at the relevant point of time, when the suit was at the stage of rebuttal evidence. As a consequence of the aforementioned order, the petitioners filed a written statement, also set up a counter-claim against the plaintiffs qua declaration of ownership in respect of the land sold by virtue of the sale deeds, also as per the judgment and decree.

Mr. Anil Kshetrapal, learned Senior Counsel assisted by Mr. Rohit Nagpal, learned counsel appearing on behalf of the petitioner(s) in CR Nos.6753, 6855 & 6856 of 2014 and Mr. S.S. Dinarpur and Mr. Subhash Godara, learned counsel appearing on behalf of the petitioner(s) in in CR Nos.6696 & 6222 of 2014 submits, that even the trial Court framed the issues on the aforementioned points and at that stage, respondent Nos.1 & 2 moved an application for striking out the written statement-cum-counter claim which has been allowed relegating the party to seek the independent remedy as per the provisions of Order 8 Rule 6-C of the Code of Civil Procedure.

They further submit that respondent Nos.1 & 2/plaintiffs through their sister, during the interregnum, had also filed an independent

suit challenging the judgment and decree dated 23.11.1982, but the same has been dismissed vide judgment and decree dated 10.03.2016. Copy of the same has been handed over to this Court during the course of the hearing, which has been taken on record, thus, urges this Court that once the order of this Court has become final impleading them as defendants, the consequential effect of filing the written statement and setting up of the counter claim cannot be taken away in any manner and as sought to be projected by the respondent Nos.1 and 2/plaintiffs, thus, prays for allowing the present revision petitions.

Per contra, Mr. A.K. Khubbar, learned counsel appearing on behalf of the respondents-plaintiffs submits that the approach of the trial Court relegating the petitioners in filing the independent suit as per the provisions of Order 8 Rule 6-C of the Code of Civil Procedure is perfect, legal and justified. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **“Ram Niwas V/s Risala”, 2001 (3) RCR (Civil) 273.**

He further submits that filing of the written statement/counter-claim would result into *de novo* trial. Already the litigation is of the year 1975. The remedy adopted by the Court is thus perfectly in accordance with law and does not call for any interference. Even the plaintiffs have filed suits challenging the sale deeds, thus, they have independently set up the right as sought to be incorporated by way of counter claim in such proceedings, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that there is a merit and force in the submissions of Mr. Anil Kshetrapal, Senior Advocate, Mr. S.S. Dinarpur, Advocate and Mr. Subhash Godara, Advocate, for, the order dated 27.01.2014 of this Court, as indicated above, allowed the petitioners to be treated as defendants. For the sake of brevity, the operative part of the order dated 27.05.2014 reads thus:-

“This order shall dispose of C.R. Nos. 6161, 6336, 6337 of 2012, 4965 and 4966 of 2013.

Although notices have not been ordered in C.R. Nos. 6336, 6337 of 2012 and 4965 and 4966 of 2013, I dispense with the same since the notice has been ordered in C.R. No. 6161 of 2012 and respondent No. 1 is represented through counsel.

All these revisions are in respect of the order passed in the suit where respondent No. 1 is the plaintiff. Various applications came to be filed at the instance of person claiming to have purchased the equity of redemption in relation to the property, which is a subject matter of suit for redemption filed by respondent No. 1.

The purchasers' applications for impleadment are contested by the plaintiff himself stating that the sales are not valid and would also contend that as regards petitioners in C.R. 6336 and 6337 of 2012 the additional plea that their sale is challenged in some other suit. There is denying the fact that the plaintiff who sues for redemption cannot make possible the impleadment as co-plaintiffs persons whose sales, he does not support. The applicants cannot, therefore, seek an impleadment as co-plaintiffs when the plaintiff does not admit the sales or decree.

However, the apprehension expressed by the senior counsel representing in C.R. No. 6161 of 2012 and 4966 of 2013 is that having sold the property for huge consideration of a few crores

the plaintiff might collude with the defendant and defeat their own right of securing the property free of encumbrance which admittedly subsists on the paper and which is sought to be redeemed.

I find the apprehension reasonable but the plaintiff shall be protected in the integrity of his suit by not allowing any of these alleged purchasers to join plaintiff as co-plaintiffs. Their presence shall only to ensure that there is no conduct of the plaintiff which could imperil their own interest in relation to the property which they claim as having been transferred respectively in their favour.

Learned counsel appearing for the respondent-plaintiff himself has no objection, if only his own right to prosecute the suit for redemption is not fettered in any way by any of these petitioners. The way out, therefore, shall be to make the impleadment effective in such a way that they are added as defendants in the suit in the order in which the decree or sales are made in respect to their favour. The order already passed dismissing the application for impleadment as co-plaintiffs is set aside but the relief of impleadment shall operate as impleadment as defendants in suit. All the Civil Revisions are ordered with the above directions.”.

The aforementioned order had attained the finality, in essence, has not been challenged by the respondents-plaintiffs. Once a valuable right for impleading the petitioners as defendants has accrued, they cannot be prevented to set up an independent right by virtue of which they acquire the right, title and interest in the properties i.e. by virtue of the sale deeds/judgment and decree, as noticed above.

During the course of the hearing, it has also been pointed out that during the pendency of the regular second appeal aforementioned, the

respondents-plaintiffs had also moved an application under Order 41 Rule 27 of the Code of Civil Procedure indicating the factum of the sale deed/judgment and decree. It is strange that once there is a categorical admission on their behalf, contest of the present revision petitions and moving of the application is complete somersault. In such eventuality, the petitioners cannot be left in lurch and remediless as indicated in the impugned order. The aforementioned provisions of law can only be pressed into service keeping in view the peculiar facts and circumstances where the case is of permanent/prohibitory injunction. However, as indicated above, the controversy involved in the present case is with regard to the declaration/seeking redemption and the claim of the defendants as set up in the written statement/counter claim, which of course would be proved in accordance with law i.e. acquisition of the right and interest by virtue of the judgments and decrees and the sale deeds stated to have been effected by the respondents-plaintiffs, but so long so, the registered document, sale deeds and judgments and decrees are in existence, thus, they carry a presumption of truth. In view of such facts and circumstances of the case, I am of the view that the impugned order is not sustainable in the eyes of law. All these factors have not taken care of by the Courts below, much less, a subsequent event had also taken place i.e. the judgment and decree dated 10.03.2016 rendered in Civil Suit No.05100 of 2013, though, the other suits at the instance of the respondents-plaintiffs, in this regard, are stated to be pending. Be that as it may, I am of the view that the application of the respondents-plaintiffs is totally misplaced and de hors of the merit, resulting into the passing of the fallacious and capricious order and

accordingly, the same is hereby set aside. In fact the trial Court was totally misplaced in not appreciating the aforementioned facts, much less, consequential effect.

With the aforesaid observations, the revision petitions stand allowed.

07.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No