

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 8863 of 2015

Date of decision : 14-01-2016

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Dayawanti and another

.....Petitioners

Versus

Sheo Narain

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.A Sheoran, Advocate for the petitioners.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present petition has been filed for setting aside the impugned order dated 10.11.2015 (Annexure P-2) passed by the Civil Judge (Junior Division), Charkhi Dadri, whereby the application of the petitioners-plaintiffs under Order 1 Rule 10 and Order 6 Rule 17 of the Code of Civil Procedure was rejected

Petitioners-plaintiffs had filed a suit (Annexure P-1) for declaration on the ground that the property measuring 109 kanal 6 marla given in the headnote of the plaint is joint Hindu family coparcener property and the petitioners-plaintiffs are having their birthright which is 2/3rd share i.e 72 kanal 16 marla and they are entitled to get separate possession by partition. Further prayer was

made for permanent injunction restraining the respondent-defendant to alienate in the form of sale, gift, mortgage or by any other means of the property in dispute. During the pendency of the suit, the respondent-defendant Sheo Narain had sold out some part of the suit property to vendees namely, Krishan Devi, Dharmal Devi and Nirmala Devi vide registered sale deed no. 3279 dated 27.10.2011. Accordingly an application under Order 1 Rule 10 and Order 6 Rule 17 of the Code of Civil Procedure praying for amending the plaint and for impleading the aforesaid vendees as defendants in the present suit was made. The application has been dismissed by the trial Court by making reference to the Supreme Court judgment in the case of **Sanjay Verma vs. Manik Roy and others, 2007(2) LJR 565**, wherein a suit for specific performance of a contract has been filed by the plaintiff against one Rajeshwari Devi. A further declaration was sought to the effect that defendant no.1 had no right to execute four sale deeds in favour of defendants no. 2, 3, 4 and 5. During the pendency of suit, a temporary injunction was granted in favour of the appellant. After the order of injunction was passed, some transfers were made by the defendants. The subsequent purchasers filed an application in terms of Order 1 Rule 10(2) CPC for impleadment to contest the suit and to permit them to file written statement. The trial Court rejected the prayer for implement by holding that the transfer was pendente lite and was clearly hit by Section 52 of the Transfer of Property Act, 1882. Against the order of the trial Court, a writ petition was filed before the High Court which

was allowed holding that the respondents' vendors were not parties to the suit and there was nobody to represent and safeguard their interest and therefore they are required to be added as parties in the suit for the ends of justice. Order of the High Court was challenged in an SLP before the Supreme Court which was allowed and it was observed in paragraph 12 as under:

“The principles specified in [Section 52](#) of the T.P. Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in [Section 52](#) of the T.P. Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying [Section 52](#) is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court.”

However, in the above said case, Hon'ble the Supreme Court was not dealing with the case where a co-share had filed a suit

for partition. In the case of **Rupesh Singh vs. Pitamber Singh and others, 2013(5) RCR (Civil) 208**, whereby a revision petition was filed assailing the order dated 5.3.2012 (Annexure P-6) passed by the Civil Judge (Senior Division) SAS Nagar, Mohali allowing application under Order 1 Rule 10(2) moved by legal heir of one Bakshish Singh for impleading her as party to the suit along with all other Class I heirs of deceased Bakshish Singh. In this case, inheritance of Bakshish Singh was in dispute in the suit. Plaintiffs have set up Will dated 13.10.1989, whereas defendant no.1 has set up Wills dated 8.10.1993 and 8.6.1994. The applicant two other daughters and widow of Bakshish Singh were his class I heirs along with plaintiffs and defendant no.1 being his sons. It was observed by the co-ordinate Bench of this Court that inheritance of Bakshish Singh cannot be effectually and completely adjudicated upon in the absence and behind the back of the three daughters and widow of Bakshish Singh. They are, therefore, not only proper but necessary parties to the suit. Any adjudication of the Wills set up by plaintiffs and defendant no.1 in the suit without impleading the daughters and widow of Bakshish Singh would be an exercise in futility. The revision petition was dismissed in limine by holding that mere delay in filing of application is not sufficient to dismiss the said application in view of specific provision contained in Order 1 Rule 10 (2) CPC requiring the Court to add any such person as party to the suit at any stage of the proceedings.

In the case of ***Pirthi vs. Santu and others*** in CR No.

6554 of 2013 decided on **29.10.2013** by a Co-ordinate Bench of this Court, a revision petition was filed against the impugned order dated 16.10.2013 (Annexure P-3), whereby the application filed by the petitioner under Order 1 Rule 10 CPC and under Order 6 Rule 17 CPC for impleadment of Sita Ram as defendant no.3 as also for carrying out the amendment as prayed for was dismissed. In the revision petition, petitioner prayed that no prejudice is going to be caused to the opposite party. In this case, the entire suit property had been sold to Sita Ram. Since the transfer had been made by a co-sharer during the pendency of the suit, the decision of the suit would affect the right of the subsequent purchaser. Further, it would lead to multiplicity of proceedings. Revision petition was allowed and the impugned order was set aside.

In the present case, the suit was filed for partition and during the pendency of the suit, the respondent-defendant Sheo Narain had sold out some part of the suit property to vendees namely, Krishan Devi, Dharmal Devi and Nirmala Devi vide registered sale deed no. 3279 dated 27.10.2011. Since some part of the suit land had been sold, the defendant Sheo Narain who is contesting the suit will be bound by the final judgment which is passed in a suit of partition. The subsequent purchasers have acquired a right to participate in the suit as they have become co-sharers along with the plaintiff and defendant Sheo Narain.

In view of the facts and circumstances of the present case, for proper adjudication of the case, the vendees are necessary

and property parties and the petitioners-plaintiffs are also entitled to amend the suit to challenge the sale deed on the grounds available to them. Hence, in view of all that has been discussed, impugned order dated 10.1.2015 is being set aside resultantly allowing the application of the petitioners-plaintiffs under Order 1 Rule 10 and Order 6 Rule 17 of the Code of Civil Procedure.

Hence, present revision petition is hereby allowed. But, in order to save the time of the trial Court, notice is not being issued.

14-01-2016
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(**RITU BAHRI**)
JUDGE