

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

Date of decision:4.7.2016

1.

SAO No.42 of 2016(O&M)

Roshani Devi

....Appellant

VERSUS

Harjeet Singh and others

.....Respondents

2.

SAO No.43 of 2016(O&M)

Roshani Devi

....Appellant

VERSUS

Harjeet Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Rakesh Gupta, Advocate for the appellant.

REKHA MITTAL, J.

This order shall dispose of SAO Nos.42 and 43 of 2016 as these have emerged out of common order dated 26.02.2016 passed by the Additional District Judge, Kaithal. For the sake of convenience, facts are taken from SAO No.42 of 2016.

Harjeet Singh and others- respondents No.1 to 3 filed a suit for declaration, joint possession with permanent injunction claiming themselves to be owners in joint possession to the extent of 1/7th share in

equal shares out of land mentioned in para No.1(a) and (b) of the plaint by opening challenge to mutation No.6434, release deed No.449/1 dated 13.06.2002 and mutation No.6659 on the premise that the same are null and void, illegal and not binding upon rights of the respondents/plaintiffs. The suit was contested by appellant-Roshani Devi, defendant No.3, as well as defendants No.1, 2, 4 to 6.

On consideration of the materials on record in the light of rival submissions made by counsel for the parties, the learned trial Court decided issues No.1 and 2 (pertaining to merits of the controversy) in favour of the respondents but the suit was dismissed only on the ground that the same is bad for non-joinder of necessary parties by recording findings on issue No.5 in favour of the appellant/defendant.

Two appeals were preferred against the judgment and decree dated 29.05.2013 passed by the trial Court. One was filed by respondents No.1 to 3/plaintiffs and the other by Roshani Devi (appellant/defendant No.3) to assail the findings of the trial Court on issues No.1 and 2. Both the appeals were disposed of by the Appellate Court vide judgment and decree dated 26.02.2016 whereby the judgment and decree passed by the trial Court has been set aside and the matter has been remitted to the trial Court for adjudication afresh with a direction to implead Rajeev, adopted son of Jogi Ram as a party in the suit.

Counsel for the appellant has submitted that she (appellant) raised a specific objection with regard to non-joinder of necessary parties i.e. Rajeev adopted son of Jogi Ram, but despite that objection, the respondents did not take any steps to implead said Rajeev as a party on the array of defendants. It is further argued that the respondents cannot be

allowed to take advantage of their own wrong by setting aside the judgment and decree passed by the trial Court upholding plea of the appellant that the suit is bad for non-joinder of necessary party. It is further submitted that as the trial Court has refused to exercise jurisdiction for impleading Rajeev as a party, there was no occasion for the Appellate Court to allow such impleadment. In support of his contention, he has invited attention of the Court to the proviso appended to Rule 9 of Order 1 of the Code of Civil Procedure, 1908 (in short 'CPC') wherein it has been laid down that nothing in Rule 9 shall apply to non-joinder of a necessary party.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts below.

It is an undisputed position of the case that claim of the respondents/plaintiffs qua merits of the controversy and their entitlement to 1/7th share in the suit property was held to be meritorious in the light of findings on issues No.1 and 2 recorded by the trial Court. Nevertheless, suit of the plaintiffs was dismissed on the ground of non-joinder of Rajeev adopted son of Jogi Ram.

Rule 9 of Order 1 CPC provides for misjoinder and non-joinder of parties and a relevant extract therefrom reads as follows:-

“9. Misjoinder and non-joinder— No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
Provided that nothing in this rule shall apply to non-joinder of a necessary party.”

However, Rule 10 of Order 1 CPC deals with suit in name of wrong plaintiff and sub-Rule (2) thereof empowers the Court to strike out or add parties, at any stage of the proceedings, either upon or without application of either party and on such terms as may appear to the Court to be just. Sub-Rule (2), relevant in the present context, reads as follows:-

“10. Suit in name of wrong plaintiff— (1) xx xx

(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.”

Keeping in view the power bestowed upon the Court by sub-Rule (2) of Rule 10 CPC whereby the Court is competent to strike out or add parties at any stage of the proceedings, whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, I find myself unable to accept the submissions made by counsel for the appellant that merely because the respondents/plaintiffs failed to implead Rajeev adopted son of Jogi Ram as a party despite objection raised by the appellant in the written statement, the trial Court in the circumstances should have shirked from its obligation to implead Rajeev as a party if the Court was of the view that his presence is necessary to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit.

There cannot be any denial that appeal is the continuation of a suit. The words 'at any stage of proceedings' used in sub-Rule (2) are wide enough that even the Court of appeal is competent to allow impleading of a party in exercise of jurisdiction envisaged by sub-Rule (2) of Rule 10. Even otherwise, as per the settled position in law, technicalities of procedure cannot be allowed to stand in the way of substantial justice. Analyzed from any angle, I find myself unable to subscribe to the contentions raised by counsel for the appellant or to find out an error much less illegality in the impugned judgment.

In view of what has been discussed hereinabove, finding no merit, the appeals fail and are accordingly dismissed in *limine*. No order as to costs.

JULY 4, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE