

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 114

Civil Revision No.1338 of 2017 (O & M)
Date of Decision: February 28, 2017

Jai Bhagwan

..... PETITIONER

VERSUS

Harphool Singh & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. S.S. Dalal, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated December 13, 2016 (Annexure P-7) passed by the Additional District Judge, Kaithal whereby applications dated May 18, 2016 and October 19, 2016 under Order I Rules 9 & 10 CPC moved by the petitioner – plaintiff have been dismissed.

2. The contention of learned counsel for the petitioner is that petitioner – plaintiff filed a suit for declaration alongwith consequential relief of injunction claiming himself to be owner in possession of the suit property measuring 12 kanal 4 marla, situated in village Pharal, Tehsil & District Kaithal, on the basis of the registered sale deed No.2809/1 dated March 26, 1973. However, the said suit was resisted by the respondents –

defendants and one of the preliminary objections taken by the respondents – defendants was that suit is bad for non-joinder of necessary parties. Though, on conclusion of the trial, petitioner – plaintiff was held to be owner in possession of the suit property on the basis of sale deed but on account of non-joinder of necessary parties, the petitioner – plaintiff was non-suited and consequently, the suit was dismissed vide judgment & decree dated March 05, 2014 passed by the Civil Judge (Junior Division), Kaithal.

3. Aggrieved against the aforesaid judgment & decree, petitioner – plaintiff preferred an appeal and during the pendency thereof, petitioner – plaintiff moved two different applications dated May 18, 2016 and October 19, 2016 seeking permission to implead subsequent vendees of respondents – defendants. Infact, the subsequent vendees of defendants were necessary and proper parties for the proper and effective adjudication of the matter in controversy. But, learned lower appellate court has dismissed these applications simply on the ground that the applications for impleading subsequent vendees of respondents – defendants have not been filed before the trial court despite the fact that a preliminary objection was raised to the effect in the written statement.

4. Learned counsel for the petitioner further contends that though there was some error committed by the petitioner – plaintiff by non-joining the subsequent transferees of the defendants in the litigation after it was pointed out by respondents – defendants in their written statement but at the same time, learned trial court also did not impart justice to the parties to the lis by acting in furtherance of the provisions contained in Order I Rules 9 & 10 CPC which deal with the misjoinder and non-joinder of parties to the litigation. Moreover, it is well settled principle of law that rights of a party

should be decided on merits. The impleadment of the subsequent transferees of defendants is essential in the case in hand for proper, effective and judicious adjudication of the matter in controversy, especially in the circumstances that petitioner – plaintiff has been non-suited by the trial court only on account of non-joinder of necessary parties. Thus, impugned order dated December 13, 2016 is liable to be set aside and consequently, both applications dated May 18, 2016 and October 19, 2016 deserve to be allowed.

5. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any legal or factual force therein.

6. Undisputably, upon notice issued by the trial court, defendants appeared and filed their joint written statement while taking specific preliminary objection No.2 to the effect that suit is bad for non-joinder of necessary parties. It was specifically averred in the preliminary objection that defendant Ami Pal has already sold his total share out of the suit land to Risala and Siri Ram sons of Bakhtawar, resident of village Chuhar Majra, vide registered sale deed No.1664/1 dated October 21, 1974 and mutation No.3071 as well as vide sale deed No.2057/1 dated December 17, 1974, who have not been arrayed as defendants being necessary parties. It was further averred that Som Pal son of Telu Ram, Vikram Singh, Naresh Kumar sons of Mahi Pal are also necessary parties to the suit as Smt. Omi Devi had already transferred her total share out of suit land to them vide release deed No.2669/1 dated March 19, 2010 and further that, mutation No.7726 on the basis thereof has already been sanctioned. But, despite the specific objection taken by the defendants in their written statement, plaintiff

transferees/vendees as party to the suit, rather, continued with the same in their absence. An application for impleadment of the subsequent transferees/vendees of respondents – defendants was moved by the petitioner – plaintiff during the pendency of appeal, that too, after expiry of about three years on September 06, 2016, in which, again the names of all the transferees were not incorporated which led to filing a subsequent application dated October 19, 2016 as some of the transferees who had been left out, were included in the second application.

7. From the aforesaid narrated facts, it can be very well judged that the petitioner – plaintiff was not vigilant or diligent, rather, was having a casual approach. In the present case, after an objection was raised by the respondents – defendants, not only the petitioner – plaintiff persisted in the suit without joining necessary parties, but continued with the same and even after having lost the suit before trial court and after about three years of filing of appeal, he moved an application. Such a question came for consideration before the Full Bench of Travancore & Cochin High Court in case ***Pillai vs. D.M. Devasahayam, 1956 ARA.CO.181*** and it was held as under:-

“It was a well recognized rule of law that if in spite of objection raised at the proper time the plaintiff persists in the suit without joining the necessary parties, the suit has to be dismissed and that he cannot be allowed to remedy the defect in the appeal.”

8. Adverting to the facts of the case in hand, since the petitioner – plaintiff continued with the suit without joining necessary parties which has since been dismissed, cannot be allowed to remedy the defect in the appeal with regard to non-joinder of necessary parties. Moreover, it is the consistent view of different high courts that the words “at any stage” envisaged in sub rule (2) of Rule 10 CPC restricts power of the

alive and not at the appellate stage. In the case in hand, an application for bringing on record the subsequent transferee/vendees of the respondents – defendants was also moved at the fag end of the appeal. Thus, taking the case of petitioner – plaintiff from any of the angles, this Court does not find any merit in the instant petition and as such, the same is dismissed whereby the impugned order is upheld.

9. No order as to costs.

February 28, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No