

CR No.2316 of 2017

Gurpreet Kaur
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high court

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

CR No.2316 of 2017

Date of Decision: 06.04.2017

Akhil Garg

....Petitioner

Versus

Chanan Singh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rohan Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 07.03.2017 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Assandh, whereby, the application moved by the petitioner under Order 22 Rule 10 read with Section 151 CPC has been dismissed.

Briefly, the facts of the case, as made out in the petition, are that plaintiff/respondent Surat Singh filed a suit for possession by way of specific performance of contract with consequential relief of permanent injunction stating that defendant entered into an agreement to sell the land, in dispute, in favour of plaintiff vide agreement to sell dated 29.10.2009. Said agreement to sell was reduced into writing in the presence of witnesses. The defendant had received an amount of ₹ 15 lacs as earnest money from plaintiff in the presence of the witnesses and agreed that sale deed would be executed and get registered on 30.01.2010. The final date for execution and registration of sale deed was fixed as 30.01.2010. The

amount of ₹ 9 lacs was paid to the defendant in the presence of witnesses and a receipt in this regard was also issued. The dates fixed i.e 30.01.2010 and 31.01.2010 were holidays. The plaintiff reached in the Office on 01.02.2010 and waited there but the defendant did not turn up. As per case of the plaintiff, he was ready and willing to perform his part of contract and as also sent a registered A.D notice to the defendant but the defendant did not turn up to perform his part of contract. The suit was contested by filing written statement by the defendant.

During pendency of the suit, an application was moved under Order 22 Rule 10 read with Section 151 CPC by applicant-Ankit Garg for impleading him as plaintiff in place of plaintiff, who died during pendency of the suit on the basis of Will dated 09.06.2016 by deleting the name of Narain Singh etc. i.e natural legal representatives of Surat Singh-plaintiff (deceased). Said application was dismissed vide order dated 07.03.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the impugned order has been passed without any application of mind. He also submits that under Order 22 Rule 10 CPC, an alienee pendente lite may be joined as party as the Court has discretion which must be judicially exercised. The applicant could have been allowed to be impleaded as party to protect his interests. A transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired his interest and as such, he is entitled to be impleaded as party in the suit. Learned counsel also submits that the plaintiff deceased executed the Will with regard to his property, in dispute, in favour of applicant and by impleading him as party in the suit, his interest would be looked after and

he will get an opportunity to be heard. On the basis of said Will, the petitioner is entitled to be impleaded as party to the suit and no prejudice will be caused to the other party as there is no difference in contesting the suit by the legal representative of the plaintiff or by the person, who has been nominated by the plaintiff by executing the Will in his favour. Learned counsel also submits that the legal representatives of deceased-plaintiff are witnesses to the Will.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Facts relating to filing of suit and moving application by the applicant-petitioner under Order 22 Rule 10 read with Section 151 CPC are not disputed. Applicant-Ankit Garg moved the said application for impleading himself as plaintiff in place of deceased-plaintiff on the basis of un-registered Will dated 09.06.2016, whereas, the natural legal representatives of deceased-plaintiff Surat Singh are already party in the suit as the plaintiff expired during pendency of the suit and his legal representatives were impleaded as party by moving an application in this regard. On the basis of alleged Will executed on 09.06.2016, an application was moved by the applicant with the request to implead as party by deleting the name of natural legal representatives of deceased Surat Singh (plaintiff). Said alleged Will dated 09.06.2016 is regarding movable and immovable properties of the deceased plaintiff including the property against which agreement to sell dated 29.10.2009 was made in favour of plaintiff. Dalbir, Jaipal and Jai Narayan are sons of the deceased plaintiff. Meaning thereby, the applicant wants to step into the shoes of the deceased plaintiff on the

basis of Will dated 09.06.2016. It has been mentioned in the application that the applicant came to know about the death of plaintiff on 30.11.2016 and he could not move application earlier as he came to know from the sons of the deceased plaintiff that they along with other natural legal representatives of plaintiff had filed an application for being impleaded as party and that application was allowed. Reply to the application was also filed on behalf of legal representatives of plaintiff, namely, Narain Singh etc., denying the fact regarding the execution of Will. Said application was contested by the defendant on the ground of maintainability as it was moved by the applicant in connivance with plaintiffs as the counsel for the applicant was working with the counsel for the plaintiffs. It was also mentioned in the reply that the case was at an advance stage of evidence of defendant and two witnesses have already been examined. There was no need to implead any person other than legal heirs of plaintiff. An objection was also raised that the applicant was a stranger to the agreement and Will was an un-registered document, which require to be proved. The trial Court has dismissed the said application on the ground that the legal representatives of deceased plaintiff are there to represent the estate of the deceased and rights of deceased plaintiff are yet to be determined.

It is to be proved on record before the trial Court as to whether the plaintiff has been able to prove his right to specific performance of the agreement to sell, in dispute or not. The legal representatives of deceased plaintiff have already been impleaded as party in the suit. The applicant is having a separate cause of action against the legal representatives of deceased plaintiff and he cannot be considered as necessary party. Moreover, the suit is for specific performance of an agreement and the

applicant has no relevancy to said agreement to sell. The applicant is claiming his right on the basis of un-registered Will and the same is required to be proved. Said Will is stated to be executed at Delhi on 09.06.2016 by the deceased plaintiff by executing a registered GPA on 09.06.2016 in the Office of Sub Registrar, Sonapat in favour of Rajender Kumar Gupta. There was no reference of the alleged Will dated 09.06.2016 in the General Power of Attorney. Moreover, the deceased was having no right to execute it as he himself was not owner in possession of the suit land, in dispute. Only an owner could execute a Will regarding his property. The witnesses to the alleged Will are the sons of deceased plaintiff, which doubts the genuineness of the Will. The applicant is stated to be relative of GPA holder of deceased and he was well aware about the death of deceased from the very beginning. It cannot be said that he came to know subsequently about the death of plaintiff. It appears that the application has been filed just to delay the proceedings. Even the application moved by the legal representatives of the deceased has already been allowed and they have been impleaded as party. Nothing was mentioned as to whether any such Will has been executed by the deceased or not. It has been mentioned in the Will that two sons of the deceased plaintiff were attesting witnesses. It cannot be even presumed that the legal representatives of the deceased would be witnesses to the Will which has been stated to be executed by the deceased plaintiff. Nothing is mentioned in the Will as to why it was executed in the name of a stranger, who is not distantly been related to the deceased.

Keeping in view the facts as mentioned above, the impugned order dated 07.03.2017 (Annexure P-5) passed by the Additional Civil

Judge (Senior Division), Assandh requires no interference and as such, there is no merit in the contention raised by learned counsel for the petitioner and the revision petition, being devoid of any merit, is hereby dismissed.

06.04.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes