

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 6069 of 2016(O&M)

Date of Decision:22.11.2017

Rameshwar Deceased through LR Ved Parkash and others

---Petitioners

vs.

Banwari and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Sangwan, Advocate
for the petitioners

Mr. Sumit Sangwan, Advocate
for respondent No. 1

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 23.8.2016 (Annexure P-2) passed by the Civil Judge (Junior Division), Charkhi Dadri to the extent that petitioners have not been allowed to file the written statement.

Counsel for the petitioners has submitted that Banwari son of Chandgi has filed suit for partition against Rameshwar and others in which 22 persons have been arrayed as defendants. Rameshwar defendant No. 1 passed away on 12.4.2015. The instant application (Annexure P-1) was

filed by sons and daughters of Rameshwar for impleading them as legal representatives of deceased Rameshwar and permitting them to file additional written statement in their own right. The application for impleadment of Lrs was allowed but prayer for filing written statement in their own right has been dismissed. It is argued that the court below has wrongly held that if the petitioners are permitted to file additional written statement, it would amount to *de novo* trial. As a matter of fact, the petitioners do not intend to lead any evidence in case they are permitted to file additional written statement. It is further argued that on the basis of registered deed dated 31.08.2004, some portion of the land in question has been transferred in favour of the petitioners by Sh. Rameshwar and the document is already placed on record as Ex. DW/3, therefore, the petitioners are entitled to file written statement in their own right. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India **Sumtibai and others vs. Paras Finance Company Regd. Partnership Firm, AIR 2007 Supreme Court 3166.**

Counsel representing the contesting respondent, on the other hand has supported the impugned order with the submission that as the petitioners namely Ved Parkash, Roop Chand and Vinod Kumar were not allowed to be impleaded as a party on the basis of application under Order 1 Rule 10 of the Code of Civil Procedure (in short "CPC") filed by the respondent-plaintiff decided by the trial court vide order dated 25.3.2014 and the said order has been affirmed by this Court in Civil Revision No. 2410 of 2014, the petitioners being Lrs. of deceased Rameshwar cannot claim to file additional written statement on the basis of alleged registered

family settlement dated 31.8.2004. In addition, it is argued that if sons of Rameshwar want to set up their independent right and title in the property, subject matter of the lis, they are required to get themselves impleaded as a party or file an independent suit. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court of India **Vidyawati vs. Man Mohan, 1996(1) R.C.R. (Rent)7**. Further reference has been to judgment of this Court **Gaurav Uppal and others vs. Mrs. Sunita Uppal, 2004 AIR (Punjab) 204**.

I have heard counsel for the parties, perused the paper book particularly the application (Annexure P-1) and the order impugned.

Be that as it may, it is undisputed position of the case that the respondent/plaintiff filed an application under Order 1 Rule 10 of the CPC for impleading Ved Parkash, Roop Chand and Vinod Kumar sons of Rameshwar as a party on the array of defendants but the said application was dismissed by the trial court and the order came to be affirmed by this Court by holding that they are not necessary party for complete and effective adjudication of the matter in controversy. The order passed by this Court, declining prayer for impleadment of Ved Parkash and others, appears to have attained finality.

Perusal of the application (Annexure P-1) would reveal that in the concluding lines of para 4 of the application, it has been averred that the applicants may also be granted permission to file additional written statement in their own right in the interest of justice. Nothing has been mentioned as to on what basis, legal heirs of Rameshwar claimed entitlement to file additional written statement in their own right. It is also

not the plea of petitioners before the trial court that in case they are permitted to file the written statement, they will not lead any evidence.

Counsel for the petitioners has referred to judgment of Hon'ble the Supreme Court of India in **Sumtibai and others's case (supra)** whereby in a suit for specific performance, legal representatives of defendant were brought on record and they were found to be co-owners of the property in dispute and allowed to file additional written statement. In **Sumtibai and others's case (supra)**, the two Judge Bench has not taken into consideration the earlier decision of Division Bench of Hon'ble the Supreme Court in **Vidyawati's case (supra)** wherein the court dealt with its earlier decisions in **Bal Kishan Vs. Om Parkash, AIR 1986 Supreme Court 1952** and **Jagdish Chander Chatterjee vs. Sri Kishan 1973 (1) SCR 850** and affirmed the observations of the High Court that if a legal representative wants to raise any individual point which the deceased party could not have raised, he must get himself impleaded in his personal capacity or he must challenge the decree in a separate suit. Further held that it is open to the petitioner to implead herself in her independent capacity under Order 1 Rule 10 of the CPC or retain the right to file independent suit asserting her own right. The controversy raised in the present petition is squarely covered by the judgment of this Court **Gaurav Uppal and others' case (supra)** wherein this Court has taken into consideration judgments of Hon'ble the Supreme Court **Bal Kishan's case (supra)** and **Vidyawati's case (supra)**. In this view of the matter, I do not find any error much less

perversity in the order impugned, warranting intervention.

For the foregoing reasons, the petition fails and is accordingly
dismissed.

(**Rekha Mittal**)
Judge

22.11.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No