

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CR No.7085 of 2017

Date of decision:11.10.2017

Sarup Singh (deceased) through his L.R.s

..... Petitioner

Versus

Darshan Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE B.S. WALIA

Present: Mr. Vijay Rana, Advocate for the petitioners.

B.S.WALIA, J.

CM No.21925-CII of 2017

For the reasons mentioned in the application, application under Order 22 Rule 3 read with Section 151 of the CPC for bringing on record legal heirs of deceased Maninder Kaur wife of Sarup Singh (deceased) plaintiff is allowed subject to all just exceptions.

CM No.21926-CII of 2017

For the reasons mentioned in the application, application under Order 22 Rule 3 read with Section 151 of the CPC for bringing on record legal heirs of deceased Harpinder Singh L.R. No. (iii) of Shri Sarup Singh (deceased) plaintiff is allowed subject to all just exceptions.

CR No.7085 of 2017

1. Petitioners, who are legal heirs of deceased Sarup Singh-plaintiff, have challenged order Annexure P-5 dated 02.08.2017 passed by the learned Additional District Judge, Hoshiarpur whereby the application filed by plaintiff-Sarup Singh and others under Order 1 Rule 10 CPC was allowed, consequentially, judgment and decree dated 31.03.1989 passed by the learned trial Court was set aside and case remanded to the learned trial Court/successor Court with a direction to the plaintiff-respondent to file amended title/amended plaint before the learned trial Court while leaving the question of limitation open to be decided at an appropriate stage on the basis of evidence to be led by the parties.

2. Brief facts of the case leading to the filing of the present revision petition are that Sarup Singh, predecessor-in-interest of the petitioners, Harjit Singh and Ishya Pargat Singh filed a suit for permanent injunction against respondent No. 1/defendant, Shri Darshan Singh leading to order dated 06.03.1987 restraining said defendant from raising any construction over the suit property till further orders. However, during the pendency of the suit, defendant Darshan Singh raised construction over the suit property whereupon he was held guilty of contempt of court, consequentially ordered to be detained in civil prison for a period of three months. Aggrieved against the said order, Darshan Singh filed MCA No.14 of 26.4.1989. However, the same was dismissed and order dated 31.03.1989 whereby Darshan Singh i.e. respondent No.1-defendant was ordered to be detained in civil prison for a period of three months was upheld. Thereafter, Darshan Singh approached this Court by way of Civil Revision No.2734 of 1991 whereupon in lieu of undergoing detention, he was ordered to deposit a sum of

₹25,000/- as fine.

3. In the meantime, Shri Sarup Singh, predecessor-in-interest of the petitioners, moved an application for amendment of the plaint whereupon the plaint was amended vide order dated 14.10.1987 and the suit was converted from one seeking permanent injunction to a suit for mandatory injunction for directing the defendant to remove the super structure and unauthorised construction raised by him over the property in question.

4. Learned Sub Judge 1st Class, Dasuya, Distt. Hoshiarpur was pleased to decree the suit vide judgment and decree dated 31.03.1989 i.e. Annexure P-1. Aggrieved, respondent No. 1/ defendant i.e. Shri Darshan Singh preferred an appeal against the judgment and decree dated 31.03.1989 before the Court of the learned Additional District Judge, Hoshiarpur who accepted the appeal, reversed the judgment and decree dated 31.03.1989 vide judgment and decree dated 07.08.1991 i.e. Annexure P-2. In the meantime, Sarup Singh, (plaintiff) predecessor in interest of the petitioners died, whereupon his LR's i.e. wife, Smt. Maninder Kaur and sons Manmohan Singh and Harpinder Singh preferred a Regular Second Appeal before this Court which was allowed and the judgment and decree passed by the learned Lower Appellate Court dated 07.08.1991 was set aside vide judgment Annexure P-3 dated 18.02.2010 and the case remanded to the learned Lower Appellate Court to adjudicate the dispute on merits in accordance with law.

5. During the pendency of the appeal before the learned Lower Appellate Court, Manmohan Singh, LR of Sarup Singh plaintiff in order to avoid multiplicity of litigation, submitted an application for impleading Smt. Narinder Kaur, wife of

Shri Darshan Singh-defendant, as party to the suit since Maninder Kaur and Harpinder Singh, wife and son respectively of Sarup Singh had died on 14.01.2012 and 03.10.2012. As noted above, the said application was allowed vide order Annexure P-5 dated 02.08.2017 by the learned Additional District Judge, Hoshiarpur and Smt. Narinder Kaur, wife of respondent No.1-defendant, was ordered to be impleaded as defendant No.2 and as a consequence thereto judgment and decree dated 31.03.1989 passed by the learned trial Court was set aside and the case remanded to the learned trial Court/successor Court with directions to the plaintiff to file amended title/amended plaint before the learned trial Court while keeping the question of limitation open to be decided at the appropriate stage on the basis of evidence to be led by the parties.

6. Order Annexure P-5 dated 02.08.2017 has been challenged by the petitioners on the ground that vide order Annexure P-3 dated 18.02.2010, this Court had accepted the appeal filed by them and set aside the judgment and decree dated 07.08.1991 passed by the learned Lower Appellate Court and remanded the case to the learned Lower Appellate Court to adjudicate the dispute on merits in accordance with law, however, the learned Lower Appellate Court i.e. learned Additional District Judge, Hoshiarpur, instead of adjudicating the case on merits, set aside the well reasoned judgment dated 31.03.1989 passed by the learned trial Court and remanded the case to it to decide the matter afresh without going into the merits of the case. It is further the grievance of the petitioners that the learned Lower Appellate Court while passing the impugned order remanded the case only on the ground that application had been filed to implead one Smt. Narinder Kaur as party to the suit whereas said Narinder Kaur was none else than the wife of

respondent-defendant Darshan Singh. In the aforementioned background, prayer is for setting aside impugned order Annexure P-5 dated 02.08.2017 passed by the Court of the learned Additional District Judge, Hoshiarpur whereby the judgment and decree dated 31.03.1989 passed by the learned trial Court has been set aside and the case remanded to the learned trial Court to decide the matter afresh after hearing all concerned.

7. I have considered the submissions of learned counsel for the petitioners. Suit was filed on 06.03.1987 by the predecessor in interest of the petitioner's seeking relief of permanent injunction leading to interim order of same date being passed restraining respondent No.1-defendant from raising construction over the suit property. However, respondent No.1-defendant raised construction over the suit property during the pendency of the suit whereupon he was held liable for contempt of court, consequentially ordered to be detained in civil prison for a period of three months. MCA No.14 of 26.04.1989 filed by respondent No. 1-defendant was dismissed and the order directing his detention in civil prison for a period of three months was upheld. Respondent No. 1- defendant filed Civil Revision No.2734 of 1991 which was allowed and instead of undergoing detention in civil prison, respondent No.1 was ordered to deposit a sum of Rs.25,000/- as fine. In the meantime, the petitioner-plaintiff had moved an application for amendment of the plaint and vide order dated 14.10.1987, suit for permanent injunction was allowed to be amended to suit for mandatory injunction by the learned trial Court.

8. In the amended written statement, respondent No.1-defendant took up the plea that construction in question was raised by his wife Narinder Kaur and not

by him. An application was moved for impleading Narinder Kaur, wife of Darshan Singh as defendant No.2 before the learned Lower Appellate Court in proceedings thereto pursuant to order of remand vide judgment dated 18.2.2010 in RSA No.77 of 1992. However, said application was opposed by respondent No.1-defendant on the ground that the suit was filed 30 years ago and in spite of objections raised by him, Narinder Kaur was not impleaded as party and even the suit filed for possession by the petitioner-plaintiffs against Narinder Kaur was dismissed.

9. During the course of hearing of the appeal, pursuant to remand by this Court, applications were filed by both sides under Order 41 Rule 27 CPC seeking permission to place on record certain judgments and decrees. The case was fixed for hearing of said applications as well as the appeal. In the meantime, application under Order 1 Rule 10 CPC was filed by Manmohan Singh LR of Sarup Singh, plaintiff i.e. respondent-plaintiff before the learned Lower Appellate Court. In the written statement filed by respondent No.1-defendant, before the learned trial Court, a specific preliminary objection was raised that the suit was bad for non-joinder of necessary party i.e. Narinder Kaur, that construction was raised by Narinder Kaur and not by respondent No.1-defendant. In the circumstances, Manmohan Singh LR of deceased Sarup Singh, plaintiff, sought impleadment of Narinder Kaur on account of specific issue No.4 having been framed in respect thereto, as also in view of the apprehension that non-impleadment of Narinder Kaur may lead to multiplicity of litigation and proceedings, besides of the risk of decree of the trial Court remaining a mere paper decree. Although respondent-defendant No.1 opposed the application on ground of delay, however, it was not

denied that Narinder Kaur was a necessary party to the suit.

10. In the aforementioned background, the learned Lower Appellate Court by taking into account the decision of this Court in **Dharminder Singh versus Kailash Gupta 2016 (4) CCC 42** & the decision of the Hon'ble Kerala High Court in **K.K. Abraham versus Joseph Varghese AIR 2003 Kerala (1)** allowed the application for impleading Narinder Kaur, wife of respondent No/1-defendant as defendant No.2 on the reasoning that a necessary party could be impleaded at any stage of the suit for effective adjudication of the controversy involved in the suit and that impleadment could not be denied merely on the application for impleadment having been filed at a belated stage, besides in view of the principles contained in Order 1 Rule 10 CPC being applicable in proceedings in appeal as well. As a consequence thereto, the judgment and decree dated 31.03.1989 passed by the learned trial Court was set aside and the case remanded to the learned trial Court/successor Court with the direction to the plaintiff-petitioners to file amended title/amended plaint before the learned trial Court and the trial Court was directed to issue notice to the newly impleaded defendant and to proceed with the suit after giving opportunity to the said newly added defendant to contest the suit and to decide the same afresh after hearing all the contesting parties including the newly added defendant. The same was ordered to be without prejudice to the provisions of Order 1 Rule 10 (4) CPC besides the question of limitation was kept open to be decided at the appropriate stage on the basis of evidence to be led by the parties.

11. Admittedly, application under Order 1 Rule 10 (4) Rule of the CPC was filed by petitioner No.2, Manmohan Singh, LR of deceased plaintiff Sarup

Singh for impleading Narinder Kaur w/o respondent No. 1/defendant, as defendant No. 2 pursuant to remand of the case by this Court vide order dated 18.2.2010. In the circumstances, the order of the learned Lower Appellate Court allowing the aforesaid application cannot be said to be suffering from any infirmity nor has any infirmity been pointed out in the said well reasoned order passed by the learned Additional District Judge, Hoashiarpur in the background of a specific preliminary objection having been taken in paragraph No. 6 the written statement of the suit being bad for non-joinder of necessary party on account of construction having been raised by Narinder Kaur and not by respondent No. 1/ defendant, on account of issue No.4 having been framed in respect of non impleadment of Narinder Kaur as necessary party, as also in view of the apprehension of the applicant Manmohan Singh that non-impleadment of Narinder Kaur was likely to lead to multiplicity of litigation, besides the decree of the trial Court was likely to be rendered a mere paper decree. The application had been moved by none other than petitioner No. 2 i.e. Manmohan Singh, LR of deceased plaintiff Sarup Singh. On the application being allowed, it is not open to the petitioners herein to wriggle out of the implications of the order passed pursuant to the application moved by Manmohan Singh i.e. Petitioner No. 2 herein. Likewise no fault can be found with the order of remand on impleadment of Narinder Kaur as defendant No. 2 since Narinder Kaur too has to be given an opportunity to put forward her stand before the trial court. Besides the judgment and decree has been set asides not on merit but only on account of impleadment of Narinder Kaur as defendant No. 2. No doubt the suit was filed a number of years ago but the application under Order 1 Rule 10(4) was filed by none other than petitioner No. 2 after the lapse of a

number of years, that too before the learned lower Appellate Court in order to overcome the objection of non maintainability of suit in the absence of necessary party as was taken in the written statement. Accordingly, finding no merit in the revision petition, the same is dismissed in limine. No order as to costs.

October 11, 2017
Meenu

B.S.WALIA
JUDGE