

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.1149 of 2018

Date of Decision.12.03.2018

Kapoori

.....Petitioner

Vs

Rambai and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Ghangas, Advocate
for the petitioner.

-:-

AMIT RAWAL J.(ORAL)

The petitioner-defendant/appellant is aggrieved against the order dated 25.01.2018 whereby the application filed by the respondent Nos.2 to 7 for impleadment in the appeal preferred against the judgment and decree dated 17.10.2014 has been allowed.

Mr. Ajay Ghangas, learned counsel appearing on behalf of the petitioner submitted that Ram Bai, owner of the suit property, vide registered sale deed dated 09.08.2010 had executed a sale deed in favour of Kapoori, petitioner/appellant-defendant, however, challenge was laid to the aforementioned sale deed by Ram Bai by filing suit which was decreed vide judgment and decree dated 17.10.2014. Similarly, respondent No.2 to 7 had also instituted the suit on 05.08.2011, challenging the aforementioned sale deed under the Punjab Pre-emption Act as applicable to the Haryana. The aforementioned suit was dismissed vide judgment and decree dated 04.07.2015, which has attained finality. The application for impleadment under Order 1 Rule 10 CPC was submitted on 27.02.2017 alleging that after decretal of the suit, Ram Bai had executed a release deed dated 18.11.2014

background, the application has been allowed.

He further submitted that the order under challenge is without jurisdiction, for, if at all the release deed dated 18.11.2014 was made during the pendency of the suit and the same was dismissed only on 04.07.2015 then why the factum of the aforementioned document was not disclosed at that time. It is an after thought. If at all, the private respondents No.2 to 7 have any grievance, they had independent cause of action to file the civil suit but not in the manner and mode as has been done, as they are neither necessary nor proper parties for adjudication of the appeal, though the appeal has been preferred by the petitioner/appellant-defendant against the decretal of the suit titled as “*Rambai Vs. Kapoori and others*”. The order impugned if allowed to be sustained, would result into multifarious litigation and it will give a different dimension to the controversy, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Ghangas, for, the private respondents have stepped into the shoes of Ram Bai owing to registered document dated 18.11.2014, in essence, Ram Bai had no longer any right and claim in the aforementioned property. In these circumstances, if the application was not properly worded or filed under the correct provisions of law, it would, in my view, be understood to be filed under the provisions of Order 22 Rule 10 CPC. The matter with regard to proper and necessary party came to be pondered upon before Hon'ble Supreme Court in **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd. and others 2013(5) SCC 397** wherein in paragraph 22, it had laid down following principles:-

“22. In the case of Vidhur Impex (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:

“Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

- 1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.*
- 2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.*
- 3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*
- 4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.*
- 5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed

by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

The present case is of such kind which falls in the aforementioned parameters and therefore, in my view, the argument of Mr. Ghangas is not able to cut ice enabling me to form a different opinion than the one arrived at already by the Appellate Court. The order cannot be said to be passed without jurisdiction or illegal, much less, capricious.

While upholding the order under challenge, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 12, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No