

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2614 of 2015

Date of decision: 25.10.2018

Sandeep Mittal

.... Petitioner

Versus

Smt. Banti Devi and others

.... Respondents

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

Present: Mr. G.S. Duhan, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for Mr. R.K. Bansal,
Advocate for the respondent Nos.2 and 3.

B.S. Walia, J. (ORAL)

[1] Revision petition has been filed challenging order dated 11.03.2015 passed by the learned Civil Judge (Jr. Div.), Kaithal dismissing the application for impleading Ram Parsad and Anand Gupta as defendant Nos.4 and 5 while partly allowing the application under Order 1 Rule 10 CPC for impleading Shiv Kumar and Jog Dhian as defendant Nos.2 and 3.

[2] The learned Civil Judge (Jr. Div.), Kaithal dismissed the application on the ground that perusal of paragraph No.3 of the plaint revealed that the applicant-plaintiff/petitioner had specifically pleaded that defendant Banti Devi (respondent No.1 herein) had entered into an agreement to sell the suit land with one Ram Parsad son of Shri Rameshwar who subsequently entered into an agreement to sell the same with one Anand Gupta son of Shri Prem Chand, therefore, the fact pleaded in the

to sell by the defendant in favour of Ram Parsad and Anand Gupta was to the knowledge of the applicant-plaintiff/petitioner since the date of filing of the suit i.e. 24.04.2010 whereas the application under Order 1 Rule 10 CPC was moved on 23.09.2014, therefore, the suit against Ram Parsad and Anand Gupta was barred by limitation and on the aforesaid basis, the prayer for impleading Ram Parsad and Anand Gupta was rejected, although prayer for impleading Shiv Kumar and Jog Dhian (respondent Nos.2 and 3) was allowed.

[3] Learned counsel for the petitioner contended that Ram Parsad and Anand Gupta were necessary parties and in their absence, the suit would not survive, therefore, the impugned order be set aside and the application for impleading Ram Parsad and Anand Gupta be allowed.

[4] Per contra, prayer has been vehemently opposed by learned counsel for defendant/respondent Nos.2 and 3 by contending that the suit had been filed on 24.04.2010 whereas the application under Order 1 Rule 10 CPC was moved on 23.09.2014, therefore, the suit against Ram Parsad and Anand Gupta was barred by limitation, besides, there was a specific bar under Order 1 Rule 10 CPC as also Section 21 of the Limitation Act, 1963 (in short the Act). A perusal of Order 1 Rule 10 (5) CPC reveals that proceedings as against any person as defendant shall be deemed to began only on the service of summons.

[5] Since in the instant case, it is not disputed that the suit was filed on 24.04.2010 whereas the application under Order 1 Rule 10 CPC was moved on 23.09.2014 and the period for the limitation for filing a suit for specific performance is three years in terms of Article 54 of the Act, the suit qua Ram Parsad and Anand Gupta is barred by limitation especially since as

defendant is added, the suit as regards said added party shall be deemed to have been instituted only when he was so made a party.

[6] In the circumstances, I find no error in the order passed by the learned Civil Judge (Jr. Div.), Kaithal dismissing the application qua Ram Parsad and Anand Gupta.

[7] At this stage, learned counsel for the petitioner contended that the petitioner had filed the application under Order 1 Rule 10 CPC after having been granted liberty by this Court in a Revision Petition challenging dismissal of application under Order 6 Rule 17 CPC. The order passed by this Court is reproduced as under:-

“Learned counsel for the petitioner requests for withdrawal of this petition with liberty to move an application under Order 1 Rule 10 CPC before the trial Court.

Dismissed as withdrawn with liberty as prayed for.

In case such an application is moved by the petitioner, the same will be considered and decided by the Court concerned de hors the observation made in the impugned order.

August 1st, 2014

*Sd/-
(Dr. Bharat Bhushan Parsoon)
Judge”*

A perusal thereof reveals that the petitioner was granted liberty to withdraw the Revision Petition with permission to move an application under Order 1 Rule 10 CPC before the learned trial Court. Order passed by this Court did not direct that on an application being moved under Order 1 Rule 10 CPC, the same was to be allowed *de hors* the provisions of law. The application under Order 1 Rule 10 CPC was to be considered in accordance with law and was accordingly considered and the prayer for

impleadment of Ram Parsad and Anand Gupta rightly rejected. I find no merit in this contention also.

[8] Accordingly, the Revision petition is dismissed in the aforesaid terms.

(B.S. Walia)
Judge

25.10.2018
amit

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