

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

CR No.29 of 2017 (O&M)
Date of decision : 19.02.2018

Sohan Singh and another

...Petitioners

Versus

Charanjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jag Nahar Singh, Advocate for the petitioners.

Mr. S.S. Bains, Advocate for respondent No.1.

Mr. Sunil Panwar, Advocate for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-petitioners are in the revision petition against the order dated 18.11.2016 dismissing an application filed under Order 1 Rule 10 CPC seeking to add M/s Northern Carriers Private Limited as party defendant in the suit.

The plaintiffs had filed a suit for declaration claiming that the plaintiffs are co-owners in joint possession of 1/3rd share of the property in dispute. The plaintiffs had also challenged the sale deed dated 02.12.2011 executed by defendant No.1 in favour of defendant Nos.2 and 3.

In the written statement, the defendants had pleaded that the suit is bad for non-joinder of the parties i.e. M/s Northern Carriers Private Limited has not been added as a party-defendant while deciding the appeal

against order of injunction. First Appellate Court also observed that M/s Northern Carriers Private Limited has not been added as a party.

The plaintiffs filed an application on 04.09.2016 praying that M/s Northern Carriers Private Limited be added as defendant. The application has been dismissed by the Court by observing, thus:-

“4. In the present suit, the plaintiffs are claiming to be a co-sharer to the extent of 1/3rd share in the suit property. This court is of the considered opinion that M/s Northern Carrier Pvt. Ltd. is neither necessary party nor proper party. For the sake of arguments even if it is presumed that the plaintiffs succeed in the present case no hardship would arise at the execution stage to enforce the decree because M/s Northern Carrier Pvt. Ltd. is only a company in which the plaintiffs are claiming its share. Thus in view of above discussion, the application stands dismissed. To come up on 06.12.2016 for PWs.”

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

In the considered opinion of this Court, while deciding the application filed under Order 1 Rule 10 CPC, the learned trial Court has proceeded entirely on the wrong direction. It is not disputed fact that the sale deed dated 02.12.2011 was executed by M/s Northern Carriers Private Limited, a limited company. The aforesaid sale deed has been challenged by the plaintiffs. In absence of the vendor, the suit filed by the plaintiffs was bound to fail. It was the objection of the defendants that the company has not been added as a party defendant. The technical objection is sought to be

removed by the plaintiffs. Hence, the learned trial Court committed an material irregularity in dismissing the application.

Learned counsels for the respondents have submitted that the suit filed by the plaintiffs has become time barred. They submit that at this stage, company cannot be added as a party.

In the considered opinion of this court, this issue would be examined by the trial Court after recording evidence.

In view thereof, the impugned order is set aside.

Revision petition is allowed.

Application filed under Order 1 Rule 10 CPC is allowed.

However, taking into consideration that the suit is pending for the last more than 4 ½ years, learned trial court is requested to expedite the trial and make sincere endeavour to decide the suit within a period of one year from today.

19.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No