

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

121

**CM-5028-CII-2015 in/and
CR-3171-2014 (O&M)
Date of Decision : 17.07.2018**

Ashok Kumar and another

..... Petitioners

Versus

Nirmal Kumar and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate
for the non-applicants-petitioners.

Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Ajaivir Singh, Advocate
for the non-applicants-respondents.

None for the applicant.

AJAY TEWARI, J. (Oral)

CM-5028-CII-2015

This is an application for impleading the applicant as respondent No.3.

None has appeared on behalf of the applicant even on second call. Learned Senior counsel for the petitioners states that the appeal being RSA No.116 of 2012 filed by the applicant has been dismissed by this court vide judgment and order dated 11.07.2018 and therefore now the applicant would have no interest and that is why none is appearing on his behalf.

I find this to be indeed so. Consequently, the application stands dismissed.

CR-3171-2014 (O&M)

On 31.05.2018 the following order was passed:-

“CM No.11345-CII of 2018

This is an application for disposing of the appeal in terms of the Compromise deed dated 29.05.2018 (Annexure PX).

Both the parties are present in the Court and identified by their respective counsel. Parties have made a common separate statement as regards the compromise which is marked as Mark 'A-1 that they have accepted that the compromise i.e. Annexure PX has been effected between them amicably and without any coercion/pressure.

CM-5028-C-2015

However, it has been brought to my notice that one CM No.5028-C-2015 had been filed under Order 1 Rule 10 CPC for impleading that applicant and that application was directed to be heard with the main case by order dated 18.01.2017 but now the case is being sought to be decided without hearing that application.

Mr. Vikas Bahl, Senior Advocate, Mr. Divanshu Jain, Advocate as well as Mr. Roopak Bansal, Advocate and Mr. Ajaivir Singh, Advocate have vehemently argued that actually this application is completely meritless.

Be that as it may. It would not be appropriate now for the main case to be decided without hearing the application.

In the circumstances, even while recording that the compromise (Annexure PX) has been accepted by both the signatories the main case is adjourned to 09.07.2018.”

Thereafter on 03.07.2018 the following order was passed:-

“CM-11960-CII-2018

*For the reasons recorded, the application is allowed.
Documents are taken on record.*

CM-11961-CII-2018

This is an application for impleading the applicant as a respondent in the present case. The ground taken is that during the pendency of the case (i.e. the appeal which was filed by the petitioners-tenants before the appellate authority) the respondents had transferred this property in favour of the applicant by sale deed dated 16.04.2013 and it has consequently been prayed that the applicant should be impleaded as respondent.

Learned senior counsel for the respondents points out that there is a dispute about the validity of the sale deed which is pending in the civil court and consequently at this stage the applicant cannot be impleaded as a party.

Learned senior counsel for the applicant points out that the suit challenging the sale deed in question was dismissed though he has accepted that the appeal is pending.

In my opinion, another key determinant is the tactical silence of the applicant. It is not disputed that even when the sale deed was executed the applicant knew about the pendency of the landlord-tenant dispute yet despite knowledge of the same the applicant did not move an application for being impleaded. That appeal was decided and the present revision filed. This also has remained pending in this Court for the last 4 years and it was only when the existing parties have settled the dispute that this application has been moved. The argument of the learned senior counsel for the applicant that the pendency of a civil dispute removed the burden of acting promptly from the applicant cannot be appreciated in view of the facts and circumstances of the case.

Further, to my mind, in this case the jurisprudential device of 'ostensible owner' (as defined in Section 41 of the Transfer of Property Act, 1882 may also be attracted.

Though Section 41 deals with the transfer of ownership rights and the present is not such a case, yet the jurisprudential policy behind the enactment of this section is that a true owner who allows another person to act as the owner can not then challenge such actions of the ostensible owner.

In view of the entire conspectus of facts, in my considered opinion, the applicant is neither necessary nor a property party at this stage because if the civil dispute between the applicant and the respondents is ultimately decided in favour of the applicant, he would be at liberty to seek the fruit of that decree.

Application stands dismissed.”

In the circumstances, the revision petition is disposed of in terms of the compromise Annexure PX.

Since the main case has been decided the pending miscellaneous application, if any, also stands disposed of.

July 17, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes

Whether reportable - No