

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.404 of 2016

Date of Decision: May 10, 2018

Anil & others

...Petitioner

Versus

Gurdev Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.M.L.Sarin, Senior Advocate with
Mr.Ritesh Aggarwal, Advocate,
for the petitioners.

Mr.Anish Setia, Advocate,
for respondent Nos.7 & 16.

Ms.Devaki Anand Sullar, AAG, Punjab,
for the State.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order dated 2.11.2015 (Annexure P-7), whereby the application under Order 1 Rule 10 CPC (Annexure P-5) for being impleaded as defendants filed in an appeal preferred by the respondents against the judgment and decree dated 7.8.2012 passed in Civil Suit No.40 of 1985 titled as “Harchand Singh & others Versus Punjab State & others”, has been dismissed.

Mr.M.L.Sarin, learned Senior Counsel assisted by Mr.Ritesh Aggarwal, Advocate, representing the petitioners submits that the suit aforementioned was decreed by the trial Court vide judgment and decree dated 7.8.2012 in the following manner:-

“106. As the result of my discussion above, suit is decreed with costs declaring that suit property belongs to Dera Udasian Sahnewal under its present Mahant Ram Dass and is earmarked for running of a langer and for running of the

Dharamshala for stay of the travellers and is a public charitable institution and that the purpose of the property could not be changed by declaring the land to be surplus and that the property cannot be utilised or allotted to the defendants. The income of the property is devised to be properly utilised for the purpose of the object of the Trust irrespective of the alleged vesting of the ownership in the Punjab State under the Punjab Land Reforms Act. Further alleged allotment in favour of defendants No.2 to 15 is declared illegal, void, arbitrary and not binding on the estate of the Dera and the alleged alloottees No.2 to 15 and defendant No.16 as the Mahant of the Dera (now represented through Mahant Ram Dass) is bound to comply with the scheme and to hand over the income under the scheme for running of the Dera.”

The suit aforementioned was filed under Section 92 of the Civil Procedure Code seeking declaration that the land in dispute along with the buildings thereon was the property of Dera Udasian, Sahnewal and was carved out for running of a langar and Dharamshala, for, the petitioners staked claim in the aforementioned Dera. It is in that background, the application was moved for being impleaded as defendants to render assistance and in case the application was allowed, the petitioners would have taken the assistance of the Lower Appellate Court by bringing on record the evidence as per the provisions of Order 41 Rule 27 CPC, for, the judgment rendered under Section 92 CPC cannot be treated to be personam but in rem.

Per contra, Mr.Anish Setia, learned counsel representing respondent Nos.7 and 16 submits that there is no illegality or perversity in the impugned order or it can be said to be without jurisdiction as the interest of the petitioners has been protected by giving liberty to file third party

appeal. The respondent-plaintiffs are *dominus litus* and had not staked any claim against petitioners and, therefore, the provisions of Order 1 Rule 10 CPC in a pending appeal at the instance of the petitioners could not have been invoked and, thus, prayed for upholding the impugned order by dismissing the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

The contents of the application (Annexure P-5) reveal that the petitioners have staked the claim in the property on the ground of inheritance, for, it was a personal property and not of the Dera and, therefore, their right by virtue of the decree, was affected. I am afraid, the remedy chosen by the petitioners was not correct as of now, it is settled law that a third party, who is effected by the judgment and decree, can always avail the remedy of appeal. This is what the import of the impugned order. Provisions of Order 1 Rule 10 CPC could not have been brought into force, for, by impleading respondents in the pending appeal, no useful purpose would have been served. In case, the petitioners had moved the application for additional evidence, it would tantamount to de novo trial, which cannot be permitted.

At this stage, learned counsel for the petitioners submits that he may be permitted to file an appeal and seek condonation of delay under the provisions of Section 14 of the Limitation Act, for, already application, for impleadment, was pending and as well as of the period which had expired before filing of the application.

In view of the aforementioned statement, I am of the view that there is no illegality or perversity in the impugned order. The same is

upheld. The revision petition is dismissed with liberty as sought, but this liberty would not take away the right of the petitioners to seek the leave of the Court to file an application seeking permission to file third party appeal.

Resultantly, with liberty aforesaid, the revision petition stands dismissed.

May 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No