

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

CR-5074-2010 (O&M)

Date of decision : 25.4.2018

Kamal Kumar Mittal

..... Petitioner

Versus

**Kamla Arora (since deceased) through LRs
and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K.Chopra, Sr. Advocate with
Mr. Ankit Middha, Advocate for the petitioner.

Mr. Kunal Mulwani, Advocate for
Mr. Vishal Garg, Advocate for
respondents No. 1 and 2.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 23.7.2010 passed by learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri (Annexure P-2), vide which three applications filed by the plaintiffs were dismissed.

The first application was moved for restoration of the suit against defendants No. 1-A, 6 and 7 under Order IX Rule 2 of the Code of Civil Procedure, 1908 (for short 'the CPC') which was dismissed on 2.6.1998 and further vide order dated 20.5.2003 it was held that since the suit against defendants No. 1-A, 6 and 7 was dismissed, therefore, there is no need to give notice to them at the time of restoration of the plaint. From the said order an application under Order I Rule 10 and under Order VI Rule 17 of the CPC was also dismissed.

First of all, i will take up the case qua applications filed under Order VI Rule 17 and Order I Rule 10 of the CPC. Said two applications were filed for impleading Ishwar Chand Goel son of Shri Nanak Chand as defendant No. 8 on the ground that during the pendency of the suit, he has purchased the suit property vide sale deed 3237 dated 1.8.2001 from defendant No. 1-A/Rajnish Arora. Therefore, he was sought to be impleaded as party and necessary amendment was sought to be made to challenge the said sale deed.

I am of the view that since sale deed is during the pendency of the suit, therefore, sale in favour of Ishwar Chand Goel is hit by the rule of *lis pendens* and Ishwar Chand Goel will be bound by the decree that will be passed against him. Therefore, there is no need to challenge the said sale deed nor there is any need to implead Ishwar Chand Goel as party. He has merely stepped into the shoes of Rajnish Arora who is already party to the suit. Therefore impugned order 23.7.2010 passed by learned Additional Civil Judge (Senior Judge), Yamuna Nagar at Jagadhri qua the said applications filed under Order VI Rule 17 and Order I Rule 10 of the CPC is upheld.

Now coming to the orders dated 2.6.1998 and 20.5.2003, it comes out that in the original suit, Rajnish Arora was defendant No. 1-A and that he engaged Mr. B.S. Chhatwal, Advocate who filed memo of appearance on his behalf and also filed power of attorney mentioning him as defendant No. 2 where as he was defendant No. 1-A. Therefore, Sh. B.S. Chhatwal, Advocate appeared on behalf of defendant No. 2 whereas he was appearing for defendant No. 1-A. It also comes out that application was moved on behalf of Rajnish Arora through his counsel mentioning him as

defendant No. 2 for clubbing his case with another case pending in the Court and fixed for 16.11.1994. Therefore, it is clear that defendant No. 1-A-Rajnish Arora having appeared mentioning him as defendant No. 2 it was on this account that error crept in the interim orders whereas defendant No. 1-A continued to be summoned and since process fee was not filed, suit against him was also dismissed in addition to defendants No. 6 and 7. So far as defendants No. 6 and 7 are concerned, there is no illegality or infirmity in the impugned order. However, since defendants No. 1-A had put in appearance therefore, there is no need to summon him. Consequently, suit against him could not be dismissed under Order IX Rule 2 of the CPC and the order dated 2.6.1998 is liable to be set aside to the said extent.

It also comes out that subsequently suit was dismissed in default in the year 1999 and application for restoration of the same was pending. Vide impugned order dated 20.5.2003, the Court while recording that the suit against defendant No. 1-A, 6 and 7 was dismissed under Order IX Rule 2 of the CPC dispensed with the source of notice to them. This is apparently on account of the error as noticed above. Therefore, order dated 20.5.2003 is also liable to be set aside so far as defendant No. 1-A is concerned.

Now the further question would arise that on account of said error, no notice was issued to defendant No. 1-A when the suit was restored in the year 2005. Defendant No. 1-A is present before this Court today as respondent No.2. Therefore, defendant No. 1-A is held entitled to join the proceedings after the restoration of the suit in the year 2005 and also entitled to necessary follow up actions including filing of pleadings if not already on the file and cross-examining the witnesses of the plaintiffs and

also entitled to lead evidence, if he so desires, despite the fact that it is claimed that Ishwar Chand Goel has been delivered possession of the suit land.

The revision is accordingly partly allowed. Both parties are directed to appear before the Court of Ms. Poonam Suneja, learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri through their counsel on 29.5.20018 at 10.A.M.

Since, the main petition is partly allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

25.4.2018

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Whether speaking / reasoned
Whether Reportable:

Yes
No