

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4447 of 2015

Date of Decision: 27.11.2018

United Church Northern India Trust Association

.....Petitioner

Vs.

Gurvinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. B.S. Rana, Senior Advocate, with
Mr. Yogesh Goel, Advocate, for the petitioner.

Mr. Sanjay Jain, Advocate, for respondents no. 3 and 4.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner-Association challenges the order of the learned Additional Civil Judge (Senior Division), Moga, dated 29.04.2015 (Annexure P-6), by which the application of the petitioner, filed under Order 1 Rule 10 CPC, for being impleaded as a respondent in Civil Suit No. 2885 of 2013, by which respondents no. 1 and 2 herein (plaintiffs) seek possession of the suit property by specific performance of an agreement of sale stated to have been entered into on behalf of the petitioner-United Church of Northern India Trust Association by one Clarence Bansi Lal with respondents no. 1 and 2 on 05.11.2008, has been dismissed.

The contention of the petitioner Association is that the aforesaid Clarence Bansi Lal had no *locus standi* to enter into any such agreement, he not being any officer bearer of the Association.

The learned trial Court on the other hand, vide the impugned order, has held that the suit being one seeking the relief of specific performance of an

agreement of sale, the petitioner has no *locus standi*, as the question of title to the suit property is not in question and therefore, if the petitioner-applicant was aggrieved of any such question of title and ownership, it would have a separate cause of action (by way of a separate civil suit to be filed by it).

Hence, observing as above, the application of the petitioner herein has been dismissed.

Mr. Rana, learned Senior Counsel appearing for the petitioner, submits that as a matter of fact Clarence Bansi Lal has been already held to be *persona non grata* as regards the petitioner Association, vide a judgment of the learned Civil Judge (Junior Division), Hoshiarpur, dated 23.11.1998, passed in Civil Suit No. RBT-92 of 1992-98.

He further submits that it is not on a question of title to the suit property, for which the petitioner is seeking to be impleaded as a respondent in the suit in the present *lis*, but to show that specific performance of the agreement of sale cannot be granted, the agreement itself being void *ab initio*, it having been entered into by a person who had no *locus* to do so.

Notice having been issued in this petition. Respondent no. 1, i.e. the plaintiff, not having responded to the such notice despite service, had been ordered to be proceeded against *ex parte*, vide an order dated 02.11.2015.

Respondent no. 2 (co-plaintiff) having also been served even by *dasti* notice, as per the report of the Registry, he too stands duly served.

Consequently, he also having chosen not to appear before this Court even as a plaintiff along with respondent no. 1, he too is proceeded against *ex parte*.

Learned counsel for respondents no. 3 and 4, (with respondent no. 3 also shown to be the United Church of Northern India Trust Association Bombay,

through Clarence Bansi Lal), submits that in fact in another *lis*, i.e. Civil Suit No. 433 of 1992, decided on 08.08.2001, the learned Additional Civil Judge (Senior Division), Dasua, in fact held that in fact Clarence Bansi Lal was duly authorised by the United Church of Northern India Trust to file that suit.

Consequently, he submits, that the agreement of sale having been entered into by a person duly authorized to do so by the Association, the petitioner is not entitled to even question the *locus* of the aforesaid Clarence Bansi Lal to enter into the agreement.

He reiterates the reasoning of the trial Court that actually the litigation amounts to a question of title to the suit property and therefore, the learned trial Court has not erred in passing the impugned order, while observing that the petitioner (applicant as regards the application under Order I Rule 10 CPC), would be at liberty to file a separate suit on the question of ownership and title.

He further submits that the application by the petitioner before the trial Court was filed is at the fag end of the trial Court, at a stage when the case was fixed for arguments and therefore, the application has been filed only to delay the trial.

In rebuttal, Mr. Rana learned Senior Counsel, reiterates what he had argued with regard to the first issue raised by learned counsel for respondents no. 3 and 4, and as regards the delay in filing the application, submits that the petitioner not being aware of the litigation till the stage that the application was filed, had therefore no choice but to file it at that stage only.

Having considered the arguments on both sides, I agree with the arguments of learned Senior Counsel for the petitioner, to the effect that by impleadment of the petitioner as a respondent in the civil suit, a question of title would not arise, because the suit property is not denied to be in the ownership of

the United Church Northern India Trust Association; the only question is as to who is the authorized representative of the said Association, who would have *locus* to enter into any agreement on behalf of the Association, to sell the suit property.

Hence, till the question of *locus* is decided, in the opinion of this Court the enforcement of the agreement entered into on behalf of the United Church Northern India Trust Association, cannot be adjudicated upon properly. Therefore, to enable the petitioner (as also respondents no. 3 and 4) to prove before the trial Court their respective claims to being the authorized representative of the Association, the impleadment of the petitioner is essential.

Consequently, this petition is allowed with the impugned order set aside. The petitioner Association through Isaac Nasrani (who, in turn, is said to be represented through an attorney, i.e. the Revd. Darbara Singh), is ordered to be impleaded as a defendant in the civil suit in question.

Having said that, it is made absolutely clear that this Court has not commented in any manner on whether it is actually the aforesaid Isaac Nasrani/Revd. Darbara Singh or Clarence Bansi Lal, who is actually the authorized person to enter into any kind of agreement on behalf of the United Church Northern India Trust Association, which is an issue that would be gone into and adjudicated upon by the learned trial Court, wholly on the basis of the evidence led before it by both sides.

November 27, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes