

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4925 of 2016
Date of decision:24.04.2018

Shree Ram and others

... Petitioners

Vs.

Gagandeep Goel and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Gogna, Advocate
for the petitioners.

Mr. Vishal Aggarwal, Advocate
for respondents No.1 to 3.

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 15.03.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Chandigarh, whereby, application filed by the respondents under Order 1 Rule 10 read with Section 151 of Civil Procedure Code to be impleaded as defendant No.7 to 9 in the suit, has been allowed.

Mr. Gaurav Gogna, learned counsel for the petitioners submitted that the petitioner-plaintiffs instituted the suit for declaration challenging the sale deed dated 25.04.2008 registered with Sub Registrar, Chandigarh Administration being illegal, void and further directing defendant no.2 for handing over the possession of SCF No.4, Sector 22-D, Chandigarh with consequential relief of mandatory injunction directing

defendant no.2 to surrender the instrument of sale deed for its cancellation on the ground that defendants No.1 and 2/ Jagdish Rai and Ajay Singh had sold the aforementioned property to defendant No.3 to 6 for a petty amount of ₹6.00 crores, without any authority of the petitioners nor there was any resolution of the Company authorizing them to do so.

The aforementioned suit was pending adjudication when an application (Annexure P-3) under Order 1 Rule 10 CPC on behalf of respondents No.1 to 3 to be impleaded as defendants No.7 to 9 in the suit was filed on the premise that they were essential and necessary, much less proper party being impleaded in the suit as there was categorical allegation in the suit against the aforementioned persons. The aforementioned application was contested by filing a reply (Annexure P-4), wherein it was stated that no relief was sought against the applicants as the suit was filed challenging the sale deed with other relief as indicated above. Respondents No.1 to 3 sought to be impleaded as defendants No.7 to 9 ceased to be directors of the Company w.e.f. 16.04.2008 and therefore, they had no role to play, thus, by applying the principle of *dominus litus*, they are not necessary and proper party for adjudication of the suit. However, the trial Court, vide impugned order in a most sketchy and mechanical manner without assigning the reasons in one line had allowed the application and thus, the order is not sustainable in the eye of law and liable to be set aside. There was no application of judicial mind expressing as to how respondents No.1 to 3/defendants No.7 to 9 are essential and necessary for adjudication of the

lis. Even respondents No.1 to 3 are not aggrieved by resolution dated 16.04.2008 vide which it was accepted as they exit from the Directorship of the Company after selling out their entire share holdings. The impugned sale deed assailed in the suit was executed by the Company in favour of the respondents No.6 to 9 after passing of resolution by the Board of Directors. Even in para 5 of amended plaint, the petitioners had not claim any relief against respondents No.1 to 3 herein and thus, urged this Court for setting aside the order under challenge.

Per contra, Mr. Vishal Aggarwal, learned counsel appearing on behalf of respondents No.1 to 3 submitted that there were specific allegations in the plaint vis-a-vis present respondents and therefore, they are essential and necessary for adjudication of the lis. A FIR had already been lodged against the respondents and in case of succession of suit in the absence of impleadment of respondents No.1 to 3, there is likelihood that respondents No.1 to 3 would seriously be prejudiced and effected. He submitted that no doubt the trial Court had not given specific reasons for allowing the application but the finding expressed in the operative part of the order is just and equitable and therefore, no fault can be found in the order under challenge. The principle for impleadment for proper and necessary party is no longer res integra. If there is some whisper against the person who has not been impleaded as party in the suit, there is every likelihood that finding may not be arrived in his absence which result into illegality and perversity, much less prejudice the right of effected person and thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gogna, for, it would be in the fitness of things to extract the operative part of the order vide which the application has been allowed:-

“Keeping in view, the averments made in the plaint that allegations have been levelled upon present applicants, they should be given opportunity to controvert the stand taken by the plaintiff against present applicants and applying principles of natural justice that no one should be condemn unheard, instant application is allowed.”

No doubt, the order under challenge is most sketchy and vague but fact of the matter is that concededly, respondents No.1 to 3 as per affidavit of Mr. Gagandeep Goel, have exited from the directorship of the Company w.e.f. 16.04.2008. This fact has not been denied by Mr. Vishal Aggarwal, Advocate. The Company runs through resolutions. The persons keep on becoming the director and exit. Respondents No.1 to 3 have resigned from the Company by submitting Form No.32 before the Registrar of the Company. Challenge in the suit was with regard to act of defendants No.1 and 2, whereby, they have sold the property in dispute to defendants No.6 to 9/vendees for paltry amount without any authority from the Company. The plaintiffs are dominus litus. On going through the plaint, much less amended plaint, there was no specific allegation against respondents, though there was passing reference against them that too when they were directors of the Company but no such allegation has been made

against them post retirement/resignation.

In my view, the impleadment of respondents No.1 to 3 as defendants No.7 to 9 is not called for. They cannot be permitted to poke their nose in the suit as no relief was sought against them. The impugned order is not sustainable in the eyes of law and suffers from illegality and perversity. The impugned order is hereby set aside.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 24, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No