

CR No.5070 of 2018

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5070 of 2018

Date of decision:11.12.2018

Jagjit Singh

... Petitioner

Vs.

Karan Amol Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B.Goel, Advocate, for the petitioner.

Mr. Amit Singh Sethi, Advocate, for respondent no.1.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 21.05.2018, whereby, an application filed by the petitioner for impleadment, being assignee as per the provisions Order 22 Rule 10 CPC in an appeal preferred by the respondent-plaintiff against the rejection of the plaint, has been declined.

The respondent-plaintiff filed the suit for possession against the defendants. Vide an application moved under Order 7 Rule 11 CPC, plaint was sought to be rejected on the ground of non-payment of court fee. The court fee was not paid. The suit was rejected. Rejection of the plaint has trapping of the decree as per the provisions of Section 2(2) CPC and the appeal is stated to be pending.

Mr. C.B.Goel, learned counsel appearing on behalf of the petitioner submitted that one of the defendants during the pendency of the appeal had passed on the possession and title to his client and therefore, in such circumstances, sought impleadment being assignee as respondent qua

1/3rd share.

Mr. Amit Singh Sethi, learned counsel appearing on behalf of respondent no.1 submitted that application is pre-mature as pith and substance is not under Order 22 Rule 10 CPC but under Order 1 Rule 10 CPC which is only applicable in a pending suit and supported the impugned order by submitting that the same does not suffer from any illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goel.

It is a matter of record that trial of the suit had not begun as plaint was rejected on the ground of non-payment of court fee. There would have been force, had the suit been pending. Owing to the pendency of appeal, apprehension expressed is far-fetched, for, being transferee, the petitioner on behalf of the assignor can always oppose the appeal on all the grounds. In case of succession of appeal, the petitioner-applicant would have a cause of action to submit an application but not in the manner and mode as indicated above. The order under challenge declining the application cannot be said to be suffering from illegality and perversity.

In view of the aforementioned observations, the revision petition is disposed of.

December 11, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No