

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

CR-5682 of 2014 (O&M)
Date of decision: 11.12.2018

Tarlochan Singh Shergill

...Petitioner(s)

Versus

Neena and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. A.K. Kalsy, Advocate for the petitioner(s).
Mr. Ajaivir Singh, Advocate
for respondent nos.1 to 3.
Ms. Akshita Chauhan, AAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the orders of the learned trial court (Civil Judge, Jr. Divn., Ludhiana), dated 18.05.2012 and 08.07.2014 (Annexures P-11 and P-14 respectively).

2. Vide the first order, various applications filed before that court were disposed of, with the petitioner aggrieved of, as submitted by the learned counsel appearing for him, of two parts of the said order; viz, that by which an application dated 25.08.2018 filed by the petitioner (defendant no.1) seeking to debar Sh. S.K. Aggarwal, Advocate for defendant no.5 from appearing as counsel in the suit, has been dismissed; the second part of the order under challenge being disposal of the application filed by the petitioner directing defendant no.5, Niranjan Singh, to 'give' his signatures for getting the same examined

“inconsonance to that application” (and he having 'given his signatures' along with photographs, in the presence of counsel for the petitioner-defendant no.1).

3. As regards the issue of not allowing Sh. S.K. Aggarwal, Advocate, to appear for defendant no.5, Niranjn Singh (now represented by his legal heirs, i.e. respondents no.1 to 3 herein), the learned trial court held that the sale deed dated 08.08.1990, in which Sh. S.K. Aggarwal was stated to be a witness, not being a sale deed under challenge, it would not debar the said counsel from appearing on behalf of Niranjn Singh.

4. Mr. Kalsy, on the other hand, points to that part of the prayer in the suit which reads as follows:-

“The defendants no.2 to 5 under the garb of decree want to take possession of plot no.627/626-L which is owned by the plaintiff and any sale deed beyond that is illegal, void and non-est...”

Hence, he contends that since any sale deed by which the suit property was purchased/sold, would be subject matter of the suit filed by the respondent-State and the sale deed (Annexure P-5) executed by respondent no.5 herein (Sonjogta) in favour of Niranjn Singh (now represented by his legal heirs, respondents no.1 to 3), it would be subject matter of the suit and consequently, Sh. S.K. Aggarwal being a witness to the said sale-deed, he would be debarred from appearing in it as counsel.

5. As regards the second issue with regard to the identity of Niranjn Singh, to establish which even the Deputy Commissioners of Ludhiana and Gurdaspur had been directed by this Court to do so (the suit property having been contended to be owned by the State and it

thereby being public land), that issue at this stage is found actually not necessary to be gone into in this revision petition, because upon specific query to learned counsel for the petitioner, he has stated that neither Niranjn Singh(defendant no.5 before the trial court), nor his LRs, have filed any counter claim to the suit filed by the respondent-State of Punjab, seeking any declaration that they be declared to be the owner of the suit land, or to seek possession thereof, or even for any other kind of relief in the present *lis*.

6. It is further to be noticed that in the application seeking that Niranjn Singh be called upon by the trial Court to give his specimen signatures along with his photographs (with that obviously having been done), that that Court has held that the application stood satisfied, with defendant no.5 having given his specimen signatures & photographs in the presence of counsel for both parties on 29.10.2008, he admittedly having been alive on that date.

7. Consequently, as regards the suit instituted by the State of Punjab, i.e. the suit in the current *lis*, whether the State is entitled to the suit property or not, would need to be seen in the light of the evidence led by both sides, and if eventually the trial court comes to the conclusion that Niranjn Singh was indeed a purchaser of the suit land from Sanjogta and that the State cannot claim it to be its own, at that stage, the identity of Niranjn Singh, who is now stated to have died, may need to be firmly established, i.e. whether defendant no.5 in the present *lis* was the same Niranjn Singh as had purchased the suit land from Sanjogta or not.

In that situation, the trial court may need to pass a specific order on the basis of the evidence led by both the parties, on whether defendant no.5 was the same person who had actually purchased the suit property from the late Sanjogta, or not.

8. Coming to the issue of whether Sh. S.K. Aggarwal, Advocate, should be allowed to appear as counsel for defendant no.5 (now represented by her LRs, i.e. respondent nos.1 to 3 herein), he being a witness (as contended) in the sale deed stated to have been executed by the late Sanjogta in favour of Niranjana Singh, Mr. Kalsy has pointed to Rule 13 of Section 2 of Part VI of the Bar Council of India Rules, which reads as follows:-

“An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interest.”

His contention therefore is, that there being a bar contained in the aforesaid provision, stating that an Advocate should not accept a brief in a case where he is likely to be summoned as a witness, Mr. Aggarwal cannot be allowed to appear on behalf of respondent nos.1 to 3 (defendant no.5) in the suit.

9. *Per contra*, Mr. Ajaivir Singh, learned counsel appearing on behalf of respondent nos.1 to 3, submits that the issue in the suit itself being whether the decree dated 17.01.1977, titled as Sanjogta and others Vs. Harbans Kaur and others (passed by the Court of Sh. Bhagwan Singh,

Sub Judge, Ludhiana in Civil Suit No.14 of 1967), is binding or not on the plaintiff, i.e. the respondent-State of Punjab, with the contention of the plaintiff State being that it is the owner of the suit land and it not being a party to the aforesaid suit decreed in the year 1977 the said judgment and decree is not binding upon it, the issue of the validity of the sale deed in which Mr. Aggarwal is stated to be a marginal witness, would not arise in the current *lis* at least.

He, however, also refers to a judgment of the Supreme Court in **Kokkanda B. Poonacha and others Vs. K.D. Ganapathi and another**, 2011(2) RCR (Civil) 381, wherein it is eventually held as follows:-

“If the prayer made by the respondents for being allowed to cite Shri N. Ravindranath Kamath as a witness is critically scrutinised in the backdrop of the above noted statement on the duties of an advocate towards his client, we have no hesitation to hold that the same was not only misconceived but was mischievous ex-facie. Neither in the written statement nor the additional written statement filed by them before the trial Court, the respondents had attributed any role to Shri N. Ravindranath Kamath in relation to the subject matter of the suit. The concerned advocate was engaged by the plaintiffs-appellants in 1996 i.e. almost 11 years prior to the filing of application by the respondents under Order XVI Rule 1(1) and (2) read with Section 151 CPC. During this long interregnum, the respondents never objected to the appearance of Shri N. Ravindranath Kamath as an advocate of the appellants by pointing out that he was interested in the subject matter of the suit. Notwithstanding this, the respondents cited him as a witness in the list filed along with the application. The sole purpose of doing this was to create a situation in which the advocate would have been forced to

withdraw from the case. Luckily for the appellants, the trial Court could see the game plan of the respondents and frustrated their design by partly dismissing the application. The learned Single Judge ignored that the respondents had included the name of Shri N. Ravindranath Kamath in the list of witnesses proposed to be summoned by them with an oblique motive of boarding him out of the case and passed the impugned order by recording one line observation that the respondents were not required to give reasons for summoning the particular person as a witness.”

10. Mr. Kalsy submits that, firstly, that the situation in the two cases is wholly different, with the name of the Advocate appearing in that case having been added in the list of witnesses only for the purpose of creating mischief, and in the present case there being no question of any mischief of that kind, and further, the fact that it has never been denied that Sh. S.K. Aggarwal was actually a marginal witness to the sale deed executed by the late Sanjogta in favour of Niranjan Singh, the bar contained in Rule 13 (supra), would operate.

11. Having considered the matter even on that issue, in my opinion, without commenting upon the petitioners' right to approach the Bar Council (or not) for any violation of Rule 13, but as already noticed from the contention of Mr. Ajaivir Singh, the suit in the present *lis* having been instituted by the respondent-State of Punjab essentially seeking that the decree dated 17.01.1977 is not binding upon it, with the validity of the sale deed *inter-se* the parties thereto not being otherwise in question (though contended to be not binding on the State, it not being a party thereto), I see no ground in these proceedings to hold that the Advocate is to be debarred from appearing. Of course, if at any stage the question of

the validity of the sale deed itself is necessary to be adjudicated upon, at that stage, the petitioner may have a grievance with regard to the aforesaid Advocate appearing for the respondents; however, as the claim of the State in its suit is on a wholly independent basis, with alienation of the suit property inter-se defendants not affecting the title of the State as set up by it in its own right, with no plea of adverse possession qua the State also having been taken by any of the defendants, in my opinion that stage is unlikely to arise, (unless, again, a plea of bona fide purchase is set up, by which even the States' title would be contended to be defeated). However, as noticed, no counter claim having been filed by any of the defendants, hence, to repeat, the issue of the validity of the sale deed is unlikely to arise in proceeding in the present *lis*.

In any case, Rule 13 (aforesaid) of the Bar Council Rules only laying down that an Advocate should not accept a brief or appear in a case which he has reason to believe that he will be a witness, and as such, the bar being directory in nature, though any person aggrieved may have a cause against such Advocate before the Bar Council, in my opinion it would not call for interference by the Court, especially as the aforementioned Advocate is not stated to be a witness in the current *lis*.

12. Hence, no interference in the impugned order is required, with of course what has been stated here-in-above, on whether or not the identity of Niranjana Singh needs to be established at a later stage, reiterated at this point again.

The petition is accordingly disposed of.

11.12.2018
sumit.k/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No