

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 03.10.2018

1. CR No.6054 of 2016(O&M)

Smt. Darshna @ Geeta and othersPetitioners

Versus

Charan Dass and othersRespondents

2. CR No.6067 of 2016(O&M)

Smt. Darshna @ Geeta and othersPetitioners

Versus

Charan Dass and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Gunjan Mehta, Advocate
for the petitioners.

Mr. Dinesh Arora, Advocate
for respondents No.1, 2, 4, 5 and 8.

Mr. Deepak Girotra, Advocate
for respondent No.9 and 10.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.6054 of 2016 titled
Smt. Darshna @ Geeta and others Vs. Charan Dass and others
and CR No.6067 of 2016 titled Smt. Darshna @ Geeta and

others Vs. Charan Dass and others are being disposed of. Since common facts are involved in the present revision petitions, therefore, the facts are being noticed from CR No.6054 of 2016.

[2]. Petitioners have preferred these revision petitions against the order dated 01.09.2016 passed by Civil Judge (Junior Division), Rohtak, vide which application filed by the petitioners under Order 1 Rule 10 CPC for impleadment along with application under Order 6 Rule 17 CPC for amendment of plaint was dismissed.

[3]. Plaintiffs/petitioners filed a suit for permanent injunction against Charan Dass. Petitioner No.1 is the wife of Charan Dass. In the suit, restraint was sought against the defendant from alienating the suit property i.e. house in which defendant was having title to the extent of 1/8th share about 200 sq. yards. The marriage of petitioner No.1 was solemnized with respondent No.1 on 15.06.1994 as per Hindu rites and ceremonies. The marriage was consummated and out of the wedlock, petitioners No.2 and 3 took birth. Petitioner No.1 was a divorcee and this was her second marriage. When respondent No.1 was threatening to alienate the property, the suit came to be filed.

[3]. The suit was contested by the defendant/respondent

Charan Dass.

[4]. During pendency of the suit, respondent No.1 along with his family members sold the property in favour of subsequent vendees namely Ashok Kumar and Rajesh Kumar. A joint application was filed by the plaintiff under Order 6 Rule 17 CPC for amendment of plaint as well as under Order 1 Rule 10 CPC for impleadment of the subsequent vendees namely Ashok Kumar and Rajesh Kumar.

[5]. The said application was allowed by the Civil Judge (Junior Division), Rohtak vide order dated 01.04.2014 by passing the following order:-

“Present: Sh. Ram Sarup Makkar, counsel for the plaintiff.

Defendant proceeded against ex parte.

Arguments heard on the application under Order 6 Rule 17 and application under Order 1 Rule 10 CPC. Keeping in view the facts and circumstances mentioned in the application as well as in the interest of justice, application in hand is hereby allowed. Now, the case is adjourned to 28.04.2014 for filing of amended plaint.

Sd/-
(Manjeet Pal)
Civil Judge (Jr. Divn.)

Rohtak. 1.4.2014.”

[6]. Perusal of the aforesaid order would show that defendant was proceeded against *ex parte* and the application was allowed wherein twin prayers were made in terms of Order 6 Rule 17 CPC and Order 1 Rule 10 CPC. In the application for amendment of plaint and impleadment of the subsequent vendees, family members of respondent No.1 namely Inderjeet, Sukhdev (deceased) through his LRs, Kalawanti, Rani Bai, Sarita, Sarla and Santosh were also sought to be impleaded as they were also vendors along with Charan Dass while selling the shares in favour of subsequent vendees.

[7]. Respondent No.1 along with his family members filed CR No.5117 of 2014 against the order dated 01.04.2014. The said revision petition was considered on technical ground on the strength of **CR No.3791 of 2013** titled **Nirmal Singh and others Vs. Tarsem Singh and others** decided on 01.05.2014, wherein practice of filing of joint application under Order 6 Rule 17 CPC and Order 1 Rule 10 CPC was discouraged. On the basis of aforesaid technical flow and on the ground that the order was bereft of reasoning, the order dated 01.04.2014 passed by the Civil Judge (Junior Division), Rohtak was set aside and the case was remanded to the trial Court with a

direction to pass separate orders on each of the applications.

[8]. Thereafter, Civil Judge (Junior Division), Rohtak passed the impugned order dated 01.09.2016. The impugned order was passed on separate applications under Order 6 Rule 17 CPC and Order 1 Rule 10 CPC, however, discussion was made in the same order.

[9]. The interpretation of order dated 06.08.2014 passed by the High Court in CR No.5117 of 2014 cannot be stretched to mean that separate orders were required to be passed on each of the applications. Merits of each of the applications can be discussed in the same common order and that would suffice to meet the requirement of decision of each of the applications.

[10]. After hearing learned counsel for the parties, I find that during pendency of the suit, respondent No.1 Charan Dass along with his family members have sold the property in dispute to Ashok Kumar and Rajesh Kumar. Since the vendors/respondents have no concern with the property as on date, therefore, subsequent vendees are required to be brought on record so as to represent the estate and also to avoid multiplicity of the litigation. Even though, the vendees can be said to have constructive notice of the pendency of the suit, but still the nature of litigation involves maintenance of wife along with children as against the husband, therefore, in order to avoid

multiplicity of litigation in future, vendee *lis pendens* can be allowed to defend the suit on behalf of the vendor to safeguard the interest of all concern. Reference can be made to **M/s Wimco Limited Vs. Horam and others, 2004(1) RCR (Civil) 437** and **Pankajbhai Rameshbhai Zalavadi Vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs and others, 2018 (1) LAR 125**. Even though, vendee *lis pendens* has no right to be impleaded under Section 52 of the Transfer of the property Act as his presence is not at all necessary for adjudication of the question between the plaintiff and the defendant.

[11]. In the instant case, the plaintiffs wanted to implead subsequent vendees in order to avoid multiplicity of litigation despite the fact that the vendee *lis pendens* has constructive notice of pendency of the suit. The adjudication of the case is not dependent upon the presence of original defendants, rather with the change of title in favour of the subsequent vendees, presence of subsequent vendees would enable the Court to adjudicate the case completely.

[12]. During course of arguments, learned counsel for the respondents vehemently submitted that *de hors* the impleadment of subsequent vendees namely Ashok Kumar and Rajesh Kumar, impleadment of family members of respondent

No.1 viz. Sukhdev (deceased) through his LRs, Inderjeet, Kalawanti, Arjun Dass (deceased) through his LRs, Rani Bai, Sarita and Sarla are wholly illegal as these persons had sold their shares independently upon all the claim of respondent No.1 in the suit land.

[13]. To that extent, in my considered opinion, the plea raised by learned counsel for the respondents can be appreciated that the plaintiffs filed the suit only to the extent of 1/8th share of respondent No.1 in the house and share of other family members of respondent No.1 was never the suit property, therefore, impugned order to the extent of impleadment of other respondents except respondent No.1 is not sustainable.

[14]. This revision petition is partly accepted to the extent of impleadment of subsequent vendees namely Ashok Kumar and Rajesh Kumar. However impleadment of Sukhdev (deceased) through his LRs, Inderjeet, Kalawanti, Arjun Dass (deceased) through his LRs, Rani Bai, Sarita and Sarla is unsustainable.

[15]. Since as per requirement of law in terms of Order 1 Rule 10 (4) CPC, in the event of addition of defendants, corresponding pleadings are required to be amended, therefore, CR No.6067 of 2016 is also allowed to the extent of allowing the plaintiffs to amend the plaint to the extent of cause of action in respect of subsequent vendees namely Ashok Kumar and

Rajesh Kumar.

[16]. With the aforesaid modification in the impugned order, these revision petitions are partly accepted.

October 03, 2018	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No