

CR-6929-2016 (O&M)

205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6929-2016 (O&M)

Date of decision : 10.12.2018

Gurmeet Kaur

... Petitioner

Versus

Harjod Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam S. Saini, Advocate
for the petitioner.

Mr. Rajinder Goyal, Advocate
for respondent Nos.4 to 6.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order, whereby the application of petitioner-defendant No.4 for transposition as plaintiff, has been dismissed.

Learned counsel for the petitioner-defendant No.4 submitted that the plaintiffs claimed the declaration by challenging the lease deed in respect of suit land, executed by Surjeet Kaur, in favour of Rattan Singh. The plaintiffs now colluded with the defendant by not pursuing the case diligently, in such circumstances, a cause of action accrued for challenging the action as her interest was also adverse to Surjeet Kaur. No independent evidence or pleadings have to be filed. In support of his contentions, relied upon the *ratio decidendi* culled out by Orissa High Court rendered in **“Piyush Hasmukhlal Desai V/s International Society for Krishna**

CR-6929-2016 (O&M)

Consciousness (ISKCON)” 2015 (5) RCR (Civil) 801.

Learned counsel for the respondent Nos.4 to 6 submitted that the applicant-defendant cannot be permitted to be transposed in view of admitted written statement, wherein all the averments in the plaint, had been admitted, therefore, there cannot be any collusion by the plaintiffs with the defendants as Gurmeet Kaur/defendant No.4/petitioner supported the case and she may have independent cause, but not in the manner and mode, as noticed above.

I have heard 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. Saini, for, there is no clash of interest with the plaintiffs, but Gurmeet Kaur/defendant No.4/petitioner cannot be permitted to transpose as plaintiff by laying challenge to the lease deed as it was based upon a different cause of action.

It would be apt to produce the provisions of Order 23 Rule 1-A of the Code of Civil Procedure, which reads thus:-

"1A. When transposition of defendants as plaintiffs may be permitted.—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

On going through the aforementioned provisions, the petitioner's case, in my view, does not fall within the aforesaid parameters.

It is a matter of record that lease deed executed by Surjeet Kaur

CR-6929-2016 (O&M)

was not qua her share, but as well as share of Gurmeet Kaur, on the basis of the general power of attorney dated 05.04.2002, whereas the suit has been filed in the year 2012.

The *ratio decidendi* culled out in “**Piyush Hasmukhlal Desai's**” case (supra), was pertaining to transposition of the proforma defendant as plaintiff, whereas the situation is not similar, therefore, the same would not apply.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned order, much less, cannot be said to be passed without jurisdiction. Accordingly, the present revision petition is dismissed.

10.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**