

..... Appellant

..... Respondents

KULDIP SINGH J.

Brief facts of case are that Walaiti Ram (present appellant) filed a civil suit for permanent injunction against Jawahar Lal Lekhi, Bhushan and Om Parkash Uppal, all residents of Mohalla Prem Nagar, Ludhiana, for restraining them from interfering in his peaceful possession and

SAO No. 33 of 2012 (O/M)

dispossessing him from disputed property, description of which is reproduced as under :-

'North : Khosal Sahib

South : Tarsem Lal Jain

East : Sardari Lal Meera Devi

West : Street

Measuring 156-8/9 sq. yds. comprised in khasra No. 5683/4563/886 to 889, 2349/891, 893, 2350/891-893, Khata No. 1908/2354/1, as per jamabandi for the year 1989-90, situated in the revenue estate of village Mahal Bhagat, HB No. 164, Tehsil and Distt. Ludhiana, known as Mohalla Prem Nagar, Civil Lines, Ludhiana.'

Plaintiff claims that he has purchased the suit land by way of sale deed No. 14205 dated 17.7.1995. Mutation No. 20795 has already been sanctioned. Defendants are threatening to dispossess him from suit the property.

Defendants on the other hand claim that Maya Devi was owner of plot No. 9, measuring 156.23 sq. yds. The sale deed claimed by plaintiff is forged and fabricated document. Plaintiff has no concern with the suit property. The suit property was left by Manna Singh for welfare of inhabitants of Mohalla Prem Nagar. Maya Devi had already sold the suit property to Sarwan Ram and Sarwan Ram sold same to Tarsem Lal and his wife, vide sale deed dated 17.8.1987. Tarsem Lal is residing in same property after constructing a double storey building. Plaintiff wants to grab plot No. 8 on the basis of forged and fabricated sale deed allegedly to have been executed by Maya Devi. Maya Devi was not owner of plot measuring

SAO No. 33 of 2012 (O/M)

156.8/9 sq. yds. after 25.5.1962.

From the pleadings, following issues were framed :-

1. Whether the plaintiff is entitled for injunction the prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable ? OPP
3. Whether the plaintiff has not come to the Court with clean hands ? OPD
4. Whether the suit of the plaintiff is bad for misjoinder and nonjoinder of necessary parties ? OPD
5. Whether the plaintiffs have played a fraud with the Court ? OPD
6. Relief.

The trial Court recorded the finding that plaintiff has proved his possession on the basis of sale deed and revenue record and accordingly granted injunction.

One of defendants, namely, Bhushan alias Kulbhushan filed the appeal against said judgment before the Court of learned Additional District Judge, Ludhiana. Pending the appeal, one Gurpreet Singh son of Paramjit Singh filed an application under Order I Rule 10 CPC, 1908 for impleading him as a party. In the application, he claimed that none of the parties have got any concern with the property bearing khasra No. 5683/4563/886 to 889, 2349/891, 893, 2350/291, 893, measuring 1 kanal 1 marla, situated at Mahal Bhagat. It was stated that property was originally owned by Manna Singh son of Dhanna Ram and some area out of said khasra number was earlier sold to Maya Devi, who had further sold same after getting the mutation sanctioned. Unfortunately, despite said sale, after a gap of long time, she again tried to alienate the property by getting the mutation sanctioned twice. Said second mutation has been revoked by Deputy Commissioner, Ludhiana

SAO No. 33 of 2012 (O/M)

and property has been shown as ownership of application. Since applicant is owner in possession, therefore, he is necessary party. The applicant came to know about suit when he was told about pendency of suit during mutation proceedings.

The learned Additional District Judge, Ludhiana, after considering the plea of both the parties observed that Manna Singh son of Dhanna Ram had sold some part of property to Maya Devi wife of Harnam Dass, who got mutation No. 5758 dated 11.7.1961 sanctioned on the basis of sale deed dated 4832 of 21.6.1960. As per record, Maya Devi sold property to Sarwan Ram by way of sale deed No. 1200 dated 26.5.1962 and said Sarwan Ram further sold the property by way of sale deed No. 9082 dated 17.8.1981 to Tarsem Lal and Trinila. In this way, Maya Devi had already sold property purchased by her. However, Maya Devi got mutation No. 20253 dated 27.10.1994 sanctioned on the basis of same sale deed No. 4832 dated 21.6.1960 and again executed sale deed in favour of Walaiti Ram. Gurpreet Singh (applicant) is none else than the grandson of original owner Manna Singh. When the factum of double sale by Maya Devi came to knowledge of applicant, he moved to the Deputy Commissioner. The Deputy Commissioner after conducting the inquiry revoked the mutation in favour of Walaiti Ram. It is a vacant plot and possession of vacant plot goes with ownership. Therefore, lower appellate Court was of the view that presence of applicant is very much required for effective and to complete adjudication of the case.

The learned senior counsel for appellant has vehemently argued that plaintiff is master of his suit. He is not seeking any injunction against Gurpreet Singh. Therefore, against his wishes, he cannot be made party.

SAO No. 33 of 2012 (O/M)

-5-

The learned senior counsel for appellant has further argued that lower appellate Court was required to record findings on each issue. For this purpose, the learned senior counsel for appellant relies upon the authorities of this Court in *Gurbachan Singh Versus Harnek Singh and others*, 1999 (1) PLJ 403 and *Rampat Versus Shri Mandir Thakur Dwara at Suhra and others*, 1988 (2) RRR 257. Reliance is also placed upon the authority of this Court in *Amritsar Diocesan Trust Association (Regd.), Amritsar Versus Amritsar Diocesan Trust Association*, *Amritsar*, 1998 (4) RCR (Civil), 154. Therefore, it is claimed that since plaintiff is not seeking any injunction against said Gurpreet Singh and it is a simple suit for injunction, therefore, he cannot be added as a party.

The scope of Order I Rule 10 CPC, 1908, was discussed by Hon'ble the Supreme Court of India in *Thomson Press (India) Ltd. Versus Nanak Builders and Investors P. Ltd. and others*, 2013 (2) RCR (Civil) 875, wherein the Apex Court observed and laid down the following principles. Relevant extracts are reproduced as under :-

'22. In the case of *Vidhur Impex* (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:

“Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles

SAO No. 33 of 2012 (O/M)

which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.
2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.
3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.
5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.'

Now, this Court is to see whether in the light of said principles, applicant was rightly made party or not ?

First of all, it is noticed that there is no bar that in appeal,

SAO No. 33 of 2012 (O/M)

necessary party cannot be added. In this case, Maya Devi had purchased some part of property measuring 156.8/9 sq. yds from one Manna Singh, original owner. She further sold the same to Sarwan Ram and Sarwan Ram further sold to Tarsem Lal and his wife, as discussed above. Therefore, Maya Devi was not left with any title in property purchased from original owner Manna Singh. Now after a long gap of time, Maya Dev got another mutation sanctioned on the basis of same sale deed and sold said property to Walaiti Ram (present appellant), vide sale deed No. 14205 dated 17.7.1995 and mutation No. 20795 was entered and sanctioned. Now, plaintiff claims possession of said plot on the basis of said sale deed. However, the remaining property of Manna Singh is recorded in the name of Gurpreet Singh and apparently, if double sale is made by Maya Devi, it will be out of remaining portion of property in khasra number mentioned above. Therefore, vital rights of Gurpreet Singh are involved. Normally, in simple suit for injunction, a person is not added as party against whom no injunction is sought. However, there can be cases where plaintiff wants to commit fraud upon Court and in order to affect vital rights of third party, file a simple suit for injunction and gets decree which is ultimately used against true owner though he is not a party to the suit. In the present case, plaintiff claims suit property on the basis of sale deed No. 14205 dated 17.7.1995 which according to applicant does not confer any title as the possession of vacant plot will always go with ownership. In this case, a fraud was sought to be committed upon Court by concealing the true facts and to affect the vital rights of Gurpreet Singh. Therefore, I am of the view that lower appellate Court was justified in not recording findings on merits and holding that Gurpreet Singh is necessary and proper party to the suit.

SAO No. 33 of 2012 (O/M)

Without presence of applicant-Gurpreet Singh, suit cannot be effectively decided. It is only Gurpreet Singh who will bring truth to the notice of Court to enable the Court to conclude as to whether plaintiff is entitled to injunction of vacant plot on the basis of sale deed, which allegedly does not confer any title. It being so, there is no illegality or infirmity in impugned judgment and order of same date impleading Gurpreet Singh as party and remanding the suit. Consequently, appeal fails and is dismissed. Since main second appeal against the order is dismissed, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

24.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No