

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3287 of 2010 (O&M)

Date of decision:11.02.2019

Amanpreet Kaur and another

... Petitioners

Vs.

Darshan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manish Gupta, Advocate
for the petitioners.

Mr. V.K.Shukla, Advocate
for respondent No.1/plaintiff.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 11.05.2010 whereby an application of the petitioners for being impleaded as defendants no.6 and 7, has been dismissed.

Mr. Manish Gupta, learned counsel appearing on behalf of the petitioners submitted that respondent/plaintiff-Darshan Singh instituted the suit for declaration on the premise that he alongwith his brother had ½ share in 5BHP Electric Motor Connection installed in the joint land owned by the plaintiff and his brother alongwith defendant no.1-Atma Singh giving description of the khasra numbers alongwith consequential relief of permanent injunction by making specific averments in paragraph 3 that his father Kartar Singh, brother of Ram Singh had sold the land of his share to defendant no.2-Mehnga Singh, who became the owner of the land of the

share of Kartar Singh. Mehnga Singh-defendant no.2 sold the same to Pritpal Singh who died leaving behind defendant no.1-Atma Singh, his father as only legal heir.

In pursuance to the receipt of notice of aforementioned suit, defendant no.2 filed the written statement and stated that land of Pritpal Singh was mutated in the name of his sisters, namely, Harpreet Kaur and Amanpreet Kaur/petitioners but despite that plaintiff did not take any steps to implead and continued with the trial. On acquiring the knowledge, moved the application and by that time, suit had reached the stage of rebuttal evidence but since the mutation was effected in their favour, right has seriously been effected. It would save the multifariousness of litigation and different verdict in case the petitioners are permitted to institute the separate suit, otherwise there will be no end to the litigation.

Per contra, Mr.V.K.Shukla, learned counsel appearing on behalf of the respondent/plaintiff- Darshan Singh submitted that petitioners were aware of the pendency of the suit and intentionally did not file the application and tantamounts to delay the adjudication of the trial, much less *de-novo*. The petitioners were *dominus litis* and cannot be forced upon to implead the persons and thus, urged this Court for dismissal of the petition by upholding the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Manish Gupta.

The averments made in paragraph 3 of the plaint and corresponding paragraph of the written statement filed by defendant no.2 read as under:-

Paragraph 3 of plaint

“3. That Kartar Singh brother of Ram Singh sold the land of his share to defendant no.2 and in this way defendant no.2 became the owner of the land of the share of Kartar Singh. Defendant no.2 sold the land to Pritap Singh who has died leaving behind defendant no.1 his father as his only legal heir as he has died childless and unmarried and his mother is already dead prior to his death. Defendant no.1 is his father.”

Paragraph 3 of written statement

“That para no.3 of the plaint is correct but land of Pritpal Singh has been mutated on the name of his sisters Harpreet Kaur and Amanpreet Kaur.”

By noticing the aforementioned averments, in my view, the suit of the plaintiff in the absence of impleadment of proper party, was *ex facie* not maintainable. Even otherwise, the petitioners did not move any application for impleadment and assuming that suit had been decreed but decree could not have been executed as the petitioner-applicant could file the objections, much less by availing the remedy under Order 21 Rules 101 and 102 CPC being third party objections and the procedure prescribed is like trial.

In my view, the trial Court ought to have noticed the aforementioned provisions of law and should have allowed the application by fixing the time line and giving liberty to the defendants to lead evidence. Thus, impugned order suffers from illegality and infirmity. The same is hereby set aside. The application for impleadment is allowed and the petitioners are allowed to be impleaded as defendants no.6 and 7 and permitted to file the written statement within a period of one month from the date of receipt of certified copy of the order. Thereafter, the trial Court shall proceed further with the trial in accordance with law.

Revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 11, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No