

CR-4469-2018 (O&M)

204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4469-2018 (O&M)

Date of decision : 09.01.2019

Kewal Singh and others

... Petitioners

Versus

Nirmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Gupta, Advocate
for the petitioners.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The short point involved in the present revision petition is whether the application under Order 9 Rule 13 of CPC for setting aside the *ex parte* judgment and decree dated 15.05.2013, filed in the year 2006, can be set aside summarily. The answer is 'no' as the petitioners-plaintiffs seriously disputed the stand of the defendants/respondents for not appearing in the case, despite service.

Learned counsel for the petitioners-plaintiffs submitted that once the application, aforementioned, was opposed, the trial Court was enjoined upon an obligation to frame the issue and fix the case for evidence and decide the application in a specified period. In support of his contentions, reliance has been laid to the ratio decidendi culled out by this Court in **“Anuraj V/s M/s Sheel Buildcon Private Ltd. and another” 2010**

CR-4469-2018 (O&M)

(7) RCR (Civil) 475.

There is no representation on behalf of the respondents, despite service. Accordingly, I proceed to decide the revision petition on merits.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that the impugned order, under challenge, is not sustainable in the eyes of law in view of the findings rendered by this Court in “Anuraj's case (supra), particularly, when the petitioners-plaintiffs had opposed the application. For the sake of brevity, the relevant paras of the same reads as under:-

“8. It is apparent from the record that the subsequent vendee purchased the land in suit from the initial vendee vide sale deed dated 13.1.2006 and a mutation came to be sanctioned on the basis thereof. The predecessor-in-interest of subsequent vendee had, in turn, made the purchase of that land from M/s Sheel Buildcom Private Limited, vide registered sale deed dated 16.11.2008 and a mutation had been sanctioned on the basis thereof as well. On point of fact, M/s Sheel Buildcon had, in turn, purchased that land from Dungar son of Lal Singh, vide registered sale deed dated 8.12.2004 and mutation had been sanctioned on the basis thereof. That purchase had been made during the pendency of the suit which had been filed by Anuraj-plaintiff-petitioner against the vendor Dungar for the specific performance of the impugned agreement. That suit came to be decreed exparte, vide judgment and decree dated 5.8.2006. The subsequent vendee filed the allowed plea under Order 1 Rule 10 C.P.C. on an averment that it had purchased the land under reference and had thereby become a party interested in the outcome of the trial. Though the learned Trial Court noticed in the impugned order itself that the subsequent vendee had also filed an independent suit for a declaration that it was a bonafide purchaser (for value of the land) under

CR-4469-2018 (O&M)

reference, it allowed the plea under Order 1 Rule 10 CPC as well.

13. The petition deserves allowance. Even when more than one recourse is available to a party, the resort can be had to only one remedy at a time. A party cannot have simultaneous resort to all the alternative remedies available to it. In view of the conceded position that the subsequent vendee had already filed a suit for a declaration that it is a bonafide purchaser and for value and without notice it could not have validly applied for the leave of the Court to be impleaded as a party in terms of the provisions of Order 1 Rule 10 C.P.C. etc. It is particularly so when it is apparent from the record that the purchase had been made by the subsequent vendee during the pendency of the litigation and in violation of the stay order granted by the Court restraining alienation of the land in question. "

The application could be decided, had there been no objection on behalf of the petitioners-plaintiffs. Keeping in view the aforementioned facts, the impugned order, under challenge, suffers from illegality and perversity, much less, without jurisdiction. The same is hereby set aside. The trial Court is directed to frame the issue in the application and decide the same as early as possible preferably within a period of six months by affording 3-3 effective opportunities to the parties to the *lis*.

The parties or through their counsel are directed to appear before the trial Court on 15.02.2019.

The present revision petition stands allowed.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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