

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 207

CR-8083-2015

Date of decision : 16.11.2019

Madan Lal

..... Petitioner

VERSUS

Umar Mohammad @ Rama
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Johan Kumar, Advocate, for the petitioner.

Mr. Rakesh Bhatia, Advocate, for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 20.11.2015, passed by the Civil Judge (Junior Division), Palwal (for short, the Trial Court), dismissing an application filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC through which he had sought amendment in his plaint to include therein a challenge to two sale deeds dated 01.12.2010 and 02.07.2013 executed in favour of respondents No. 5 and 6.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2009 the petitioner filed a suit seeking therein specific performance of agreement to sell dated 14.12.2005 with regard to the land detailed and described in the plaint (for short, the suit property). The aforesaid agreement was alleged to have been executed between him and respondent/defendant No. 1. On being put to notice, respondent No. 1 appeared before the Trial Court and filed his written statement through which he *inter alia* disclosed the fact that on 14.06.2005, through a relinquishment deed, he had transferred the suit property to his three sons. This led to the filing of an application by the petitioner under Order 1 Rule 10 CPC to implead respondent No. 1's three sons as defendants No. 2 to 4. The said application was allowed by the Trial Court

on 22.07.2013. In the year 2014 the petitioner came to know that vide sale deed dated 01.12.2010 one of the sons of respondent No. 1 namely Habib Khan (respondent No. 2) had sold part of the suit property to one Bhoti Devi whereas through sale deed dated 02.07.2013 the other son of respondent No. 1 namely Ash Mohamad (respondent No. 4) had sold a part of the suit property to Smt. Kela. Therefore, in the light of these subsequent events the petitioner filed another application under Order 1 Rule 10 CPC through which he sought to implead the aforesaid Smt. Bhoti Devi and Smt. Kela as defendants No. 5 and 6. Such application of his was allowed by the Trial Court on 19.05.2014 with a direction to the petitioner to file his amended plaint by 07.07.2014. Accordingly, on 07.07.2014 the petitioner filed his amended plaint in which averments with regard to challenge to the aforesaid two sale deeds were made by him. However, since no formal prayer had been made by the petitioner for setting aside of the aforesaid two sale deeds, another application was filed by him under Order 6 Rule 17 read with Section 151 CPC to amend his plaint to include therein the aforesaid prayer. The Trial Court through the impugned order dated 20.11.2015 dismissed such application of the petitioner primarily on the ground that the petitioner's suit was at the fag end and the prayer sought to be made now should have been made by him earlier.

Learned counsel for the parties have been heard.

While the petitioner's suit for specific performance of agreement to sell dated 14.12.2005, allegedly entered into between him and respondent No. 1 was pending, respondents No. 2 and 4, through two separate sale deeds dated 01.12.2010 and 02.07.2013, sold part of the suit property to respondents No. 5 and 6 respectively. On the happening of these events, the petitioner filed an application under Order 1 Rule 10 CPC seeking therein impleadment of respondents No. 5 and 6, which was allowed by the Trial Court on 19.05.2014. While allowing such prayer made by the petitioner the Trial Court directed the petitioner to file an

amended plaint which was done by the petitioner within the allotted time. In the amended plaint, the petitioner made specific averments with regard to his challenge to the aforesaid sale deeds. Such order of the Trial Court was not challenged by any of the respondents and therefore, the same attained finality.

Once the petitioner was permitted to implead respondents No. 5 and 6 on the ground that during the pendency of the petitioner's suit, through two separate sale deeds dated 01.12.2010 and 02.07.2013, respondents No. 2 and 4 had sold part of the suit property to them and he was further permitted to amend his plaint through an order of the Trial Court which attained finality and through such amendment he included in his plaint averments with regard to his challenge to the aforesaid two sale deeds, the fact that the challenge to the sale deeds was not made a part of the prayer clause can be termed as nothing but sheer inadvertence and therefore, in the facts of the present case as also in the interest of justice should have been allowed by the Trial Court especially when no further evidence in this regard is required to be led by either party and that such amendment would not change the nature of the suit as also for the reason that in any case the aforesaid sale transactions, in the eventuality of acceptance of the petitioner's suit, would be hit by the principles of *lis pendence*.

In the light of the above observations, the impugned order is set aside and the petition is allowed.

Needless to add that the Trial Court shall decide the petitioner's suit on the basis of its merits and evidence before it and shall be uninfluenced by the observations made by this Court in this order.

16.11.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No