

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 935 of 1994(O&M)

Date of Decision:6.5.2019

Harbans Kaur through Lrs.

---Appellants

vs.

Sukhdev Singh alias Sukhjinder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Tribhuvan Singla, Advocate
for the appellant

Mr. Prateek Mahajan, Advocate
for the respondents

Rekha Mittal, J.

CM No. 11544-CII of 2001

Heard.

Allowed as prayed for.

Disposed of accordingly.

CM No.11545-CII of 2001

Prayer in this application filed under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure (in short “the Code”) is for impleading the applicants namely Kewal Krishan, Ravinder Kumar and Hari Chand sons of Dev Raj as party on the array of appellants in FAO No.

935 of 1994.

It is contended that the applicants are the purchasers of property in question sold by Smt. Harbans Kaur vide sale deed Annexure R-3/1 and as such Harbans Kaur is not left with any right or interest in the property in question. It is further argued that Harbans Kaur is likely to withdraw the appeal in collusion with the respondents, therefore, a serious prejudice shall be caused to the applicants in case they are not permitted to join the proceedings and watch their interest.

Counsel for the non-applicants-respondents, on the contrary, would argue that as per averments raised by the applicants, they purchased land measuring 5 kanals vide sale deed dated 4.7.1989. They did not file an application for setting aside the judgment and decree dated 18.3.1989 passed by the Additional District Judge, Jalandhar. On the contrary, application for setting aside judgment and decree dated 18.3.1989 was filed by Smt. Harbans Kaur on 30.7.1990 and the same was decided by the Additional District Judge, Jalandhar vide order dated 8.10.1993. It is further argued that the present applicants never filed an application for permitting them to join the proceedings in application dated 30.7.1990 filed by Smt. Harbans Kaur even despite her having allegedly sold the land in favour of the applicants. According to counsel, even appeal bearing No. FAO-935 of 1994 against order dated 8.10.1993 dismissing application dated 30.7.1990 was filed by said Harbans Kaur. The present application has been filed by the applicants in the year 2001 after about seven years of filing of appeal by Smt. Harbans Kaur. It is argued with vehemence that in the given facts and circumstances, the applicants are not entitled to be

impleaded as a party in the appeal which was dismissed for non-prosecution, vide order dated 2.5.2013.

I have heard counsel for the parties and perused the paper book.

At the outset, it is pertinent to mention that records of the case were burnt in a fire incident that took place in the record room of this court. Counsel for the respondents has not challenged correctness of averments of the application that applicants purchased land from Smt. Harbans Kaur vide sale deed dated 4.7.1989 and as such they acquired interest in the litigation initiated by Sukhdev Singh @ Sukhjinder Singh on the basis of an agreement of sale purported to be executed by Nirmal Singh and Smt. Harbans Kaur wife of Nirmal Singh wherein the trial court allowed alternative relief of recovery but in appeal preferred by Sukhdev Singh @ Sukhjinder Singh, the judgment and decree dated 8.12.1986 passed by the trial court were modified and Sukhdev Singh @ Sukhjinder Singh was allowed principal relief of specific performance of agreement to sell Ex. P5, vide judgment and decree dated 18.3.1989. He has also not challenged contention of the applicants that Harbans Kaur may withdraw the appeal in collusion with the respondents as she has been left with no interest in the lis after she executed sale deed dated 4.7.1989.

Under Order 1 Rule 10(2) of the Code, the Court is competent to add the name of a person who ought to have been shown whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit. Taking into consideration the interest acquired by the applicants in the land subject matter of litigation

initiated by Sukhdev Singh @ Sukhjinder Singh, they are entitle to be impleaded as a party on the array of appellants and ordered accordingly.

Counsel for the appellants is directed to file amended Memo of Parties in the Registry of the Court within a period of 10 days.

Since the applicants have been allowed to be impleaded as a party, FAO No. 935 of 1994, dismissed for non-prosecution for want of representation on behalf of Harbans Kaur is ordered to be restored to its original number and stage by recalling order dated 2.5.2013. The appeal is taken on Board today itself for hearing on merits.

FAO No. 935 of 1994

The sole submission made by counsel for the appellants is that as Smt. Harbans Kaur was not duly served in CA No. 29 of 1989 decided by the Additional District Judge, Jalandhar vide judgment and decree dated 18.3.1989, the application for setting aside ex parte judgment and decree dated 18.3.1989 is liable to be accepted. It is further submitted that impugned order dated 8.10.1993 may be set aside and the matter be remitted to the successor court of Sh. P.C.Singal, the then Additional District Judge, Jalandhar for deciding regular civil appeal afresh after providing an opportunity of hearing to the applicants, allowed to be impleaded as appellants in the appeal.

Counsel representing the respondents, on the contrary, has supported the impugned order with the submission that since Smt. Harbans Kaur was duly represented in the appeal as she was one of the legal heirs of Nirmal Singh (since deceased) brought on record in regular civil appeal No. 29 of 1989, as has been noticed in para 9 of the impugned order, application

for setting aside the judgment and decree dated 18.3.1989 and the instant appeal is nothing but an abuse and misuse of process of law.

I have heard counsel for the parties and perused the documents on records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract the material observations/findings recorded in the impugned order, reads as follows:-

“9. The perusal of file also reveals that Nirmal Singh respondent-husband of present applicant who was contesting this appeal through his counsel later on died during the pendency of the appeal and this fact was brought to the notice of my learned predecessor on 27.11.87. Thereafter, an application dated 30.11.1987 was filed by the legal heirs of Nirmal Singh, respondent including Harbans Kaur (respondent No. 2) being the widow of said Nirmal Singh respondent for being brought on record as LRs of Nirmal Singh respondent. This application was allowed by my learned predecessor vide order dated 8.1.1988 and the LRs of Nirmal Singh respondent including Habans Kaur (present applicant) as widow of Nirmal Singh was brought on record. She was being represented by her counsel. The appeal was heard by my learned predecessor and was decided on 18.3.1989. In the judgment itself it is clearly mentioned that Harbans Kaur (present applicant) was represented by her counsel Sh. S.R.Chopra as L.R. of Nirmal Singh but she was ex parte as respondent No.2

10.This perusal of record therefore, clearly makes out that Harbans Kaur (present applicant) was participating in the appeal proceedings and the judgment dated 18.3.89 was passed by my learned predecessor after hearing Harbans Kaur applicant through her counsel. There is only one Harbans Kaur, whether she participated in the proceedings in her individual capacity or as L.R. of Nirmal Singh. It is hardly makes any difference as the one and the same Harbans Kaur was heard in the appeal proceedings and she was represented by her counsel in these proceedings. There hardly appears to be any ground to believe if the appeal dated 18.3.89 was passed ex parte qua Harbans Kaur applicant.

11.Harbans Kaur has filed this false application fully knowing that she was represented in these proceedings through her counsel. Since the decree dated 18.3.1989 was not ex parte decree qua Harbans Kaur widow of Nirmal Singh, therefore, there is no merit in the submissions of learned counsel for the applicants that she be given an opportunity to prove her case.”

Counsel for the appellants is not in a position to assail correctness of factual findings recorded by the court holding that Smt. Harbans Kaur along with other legal heirs of Nirmal Singh filed an application for bringing them on record as legal representatives of Nirmal Singh and the said application was allowed by the court vide order dated

8.1.1988 and legal representatives of Nirmal Singh including Harbans Kaur were represented by a counsel before the court in appeal. Perusal of judgment dated 18.3.1989, a copy whereof is available on record, would also reveal that legal representatives of Nirmal Singh including his widow namely Harbans Kaur were being represented by Sh. S.R.Chopra, Advocate before the first appellate court in regular civil appeal No. 29 of 1989. Since Smt. Harbans Kaur was being represented by a counsel, may be, in the capacity of legal representative of Sh. Nirmal Singh, it is difficult to accept contention of the appellants that Smt. Harbans Kaur was not aware of pendency of appeal or she was denied of an opportunity to be heard on merits of the appeal. That being so, I do not find an error much less illegality in the order impugned, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

6.5.2019
paramjit

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