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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-8909-CII-2022 in/and
CR-6168-2018 (O&M)
Date of Decision:27.07.2022

Surender

.. Petitioner

Vs.

Karambir Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ajay Ghangas, Advocate for the petitioner.

Mr. Arun Kumar Singal, Advocate for respondent No.1.

...

Manoj Bajaj, J. (Oral)

CM-8909-CII-2022

Applicant-respondent No.1 has filed this application seeking preponement of the hearing, as the proceedings in a suit pending before the trial Court have been stayed.

Notice in the application.

At this stage, Mr. Ajay Ghangas, Advocate for non-applicant/petitioner appears and does not oppose the prayer.

Learned counsel for the parties have further stated that respondent No.2 already stands proceeded against *ex parte* in the suit proceedings, therefore, his service in this revision petition was also dispensed with vide order dated 23.01.2019.

Application is allowed and the date of hearing is pre-poned to today.

CR-6168-2018 (O&M)

Petitioner has filed this revision petition under Article 227 Constitution of India for setting aside the impugned order dated 07.08.2018 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Samalkha, District Panipat, whereby application filed by him under Order I Rule 10 CPC for impleading himself as a party in the suit, was dismissed.

The facts, in brief leading to the revision petition are that Karambir Singh (plaintiff/respondent No.1) filed a suit for specific performance of agreement to sell dated 15.07.2014 executed in his favour by Gian Singh (defendant/respondent No.2) for selling his plot measuring 52.25 sq. yards for a total sale consideration of Rs.4,95,000/- and also prayed for a consequential relief of permanent injunction, restraining (defendant/respondent No.2) from further alienating the suit property. The suit is not being contested by defendant No.2, as he was proceeded against *ex parte*.

During the pendency of the suit, an application under Order I Rule 10 CPC was filed by petitioner-Surender seeking his impleadment in the civil suit, as the suit property was mortgaged with him on 22.01.2016. According to the petitioner, the amount received by Gian Singh (defendant) pursuant to the instrument dated 22.01.2016, was utilized by him to return the earnest money to Karambir Singh (plaintiff), which was received on execution of the agreement to sell dated 15.07.2014, so plaintiff has no right in the suit property. The petitioner prayed for his impleadment, as his interest in the suit property is involved.

The application filed by the applicant/petitioner was contested

in favour of petitioner-Surender and further reiterated his stand that the agreement to sell dated 15.07.2014 is first in time, therefore, the plaintiff is pressing his relief only against the defendant-Gian Singh, the owner of the suit property and Surender is not a necessary party to be impleaded and prayed for dismissal of the applicaiton. The Civil Judge (Jr. Divn.), Samalkha vide his impugned order dated 07.08.2018 (Annexure P-4), dismissed the applicaiton of petitioner.

Learned counsel for the petitioner has argued that on the basis of the instrument dated 22.01.2016, the petitioner had also brought a suit for possession against Gian Singh (defendant) and the same stands decreed in his favour. He submits that since the original owner has lost the interest in the property, as the said judgment and decree dated 15.01.2019 had attained finality, therefore, the petitioner is a necessary party to be impleaded in the suit filed by respondent No.1. He has argued that the Civil Judge (Jr. Divn.), Samalkha has not appreciated the sequence of events, particularly the interest of the petitioner, therefore, the impugned order dated 07.08.2018 (Annexure P-4) deserves to be set aside.

On the other hand, learned counsel for the respondent No.1 has opposed the prayer, as according to him, Surender-petitioner is stranger to the suit property and the plaintiff is not claiming any relief against him. He has argued that agreement to sell dated 15.07.2014 was between respondent No.1 and respondent No.2 and the applicant/petitioner has connived with the owner of the property to defeat the claim of respondent No.1/plaintiff. He has argued that the application was filed on the ground that the applicant is mortgagee, but the said rights in the property are separate and

performance of the contract. He prays that the revision petition be dismissed.

After hearing the learned counsel and considering the case file, this Court finds that the suit property in question was initially owned by Gian Singh (defendant), who executed two different contracts with the contesting parties herein and the owner himself is not contesting the suit filed by plaintiff-Karambir Singh. The facts and circumstances of the case reveal that the interest of the petitioner is very much involved in the suit property and as the original owner is not contesting the same, who has already been proceeded *ex parte*, therefore, even if, it is assumed that the petitioner-Surender is not a necessary party, but at the same time, at least he would be a proper party. Thus, this Court has no hesitation in holding that the impugned order dated 07.08.2018 (Annexure P-4) is not sustainable.

Resultantly, the revision petition is allowed and the impugned order dated 07.08.2018 (Annexure P-4) is set aside and the application filed by the applicant/petitioner under Order I Rule 10 CPC for impleading himself as a party in the suit is allowed

27.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No