

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.CR-3323-2022 (O&M)

Suresh Kumar

....Petitioner

Versus

Brook Hospital for Animals India

..Respondent

2.CR-4981-2022 (O&M)

Suresh Kumar

....Petitioner

Versus

Brook Hospital for Animals India

..Respondent

Date of decision: 02.12.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yatish Goel, Advocate for
Mr. Kunal Dawar, Advocate for the petitioner

Mr. Akshay Jindal, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

By this order, two civil revision petitions i.e CR 3323-2022 and CR 4981-2022 which have come up for final disposal, shall stand disposed of.

The relevant facts, in brief, are required to be noticed.

The petitioner herein is the plaintiff. His suit for grant of decree of permanent injunction was dismissed vide judgment and decree dated 29th August, 2019, whereas, the respondent's cross suit for grant of decree of declaration qua the ownership of the defendant in the suit

property was decreed. The plaintiff filed the First Appeal and during its pendency, he filed an application under Order XXII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') in order to substitute the original respondent with M/s Giri Kunja Land Promoters, which had purchased the property vide sale deed dated 6th September, 2021. The application has been dismissed by the First Appellate Court on the ground that such an application can be filed only by the subsequent purchaser and not by the plaintiff (appellant). The correctness of the order passed on 21st July, 2022 has been questioned in CR 3323 of 2022. Another attempt by the plaintiff to amend the plaint in order to add M/s Giri Kanja Land Promoters as a party to the litigation by filing an application under Order VI Rule 17 CPC has also been dismissed by the First Appellate Court. The other revision has been filed challenging the same.

Order XXII Rule 10 reads as under:-

“10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.
(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)”

It is evident that Order XXII Rule 10 CPC uses three expressions namely assignment, creation or devolution of any interest during the pendency of a suit. Thus, the scope of Order XXII Rule 10

CPC, being expansive, covers the transfer of the property. Such a transfer will fall within the meaning of the expression '*creation*'. While disallowing the application, the First Appellate Court has relied upon the judgment passed by the Supreme Court in **Dhurandhar Prasad Singh vs. Jai Prakash Universtiy, AIR 2001 (SC) 2552.** This Court has sincerely perused the said judgment and is of the considered view that the same is not applicable to the facts of the present case because in the aforesaid case, the court examined the issue with regard to the requirement of filing an application by the subsequent transferee. In that context, the Court made an observation that filing of such an application by the plaintiff under Order XXII Rule 10 CPC is not necessary and if the subsequent transferee/vendee does not file such an application, then, he runs the risk of decision in the case without being heard. In this case, the situation is not the same. The plaintiff filed an application for substituting the original defendant with the subsequent transferee. The transfer of the property during the pendency of the litigation is not in dispute. Hence, it is in the interest of all the parties if the subsequent transferee gets an opportunity of being heard before deciding the appeal. Though the learned counsel representing the respondent has submitted that the plaintiff has filed a subsequent suit for grant of decree of declaration and injunction, however, since the trial court has decreed the cross suit filed by the defendant while granting a decree of declaration with regard to the ownership in the suit property, therefore, the filing of a subsequent suit, by the petitioner, shall not debar him from continuing with the proceedings in the present appeal.

Keeping in view the aforesaid facts, CR 3323 of 2022 is allowed. The order passed by the First Appellate Court on 21st. July, 2022 is set aside.

In view of the order passed in CR 3323 of 2022, the learned counsel representing the petitioner in CR 4981- 2022 prays for permission to withdraw the revision petition. Ordered accordingly.

Since the first appeal is pending for the last three years, hence, the First Appellate Court is requested to make sincere endeavours for final decision of the appeal, preferably, within a period of six months.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

02.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE