

**121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-8967-CII-2022,
CM-9002-CII-2022 in/and
CR-5265-2018
Date of decision : 22.08.2022**

Kishan Lal and others **...Petitioners**
Vs.
Lakhi and others **...Respondents**

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Salathia, Advocate for non-applicant/petitioners.

Mr. Aashish Chopra, Sr. Advocate with
Mr. Rahul Gautam, Advocate,
Mr. Anirudh Sharma, Advocate and
Ms. Mehar Nagpal, Advocate
for the applicant-respondent Nos.4, 8 to 10.

MANOJ BAJAJ, J.

CM-8967-CII-2022

Application is allowed as prayed for.

CM-9002-CII-2022

This application has been filed by respondent No.4 under Section 151 CPC for modification of the order dated 16.08.2018, whereby during pendency of revision petition, the suit proceedings were ordered to be kept in abeyance.

Learned senior counsel for the applicant/respondents submits that vide order dated 16.08.2018, the proceedings in the civil suit before the Civil Judge were ordered to be deferred and in view of the said order, the trial is not progressing. He submits that the said order be modified or in the alternative the main petition be heard on merits.

Notice in the application.

At this stage, Mr. Amit Jain, Sr. Advocate with Mr.Chetan Salathia, Advocate accepts notice and states that he has no objection, in case the date of hearing in the main case is pre-poned to today.

On the oral request of learned counsel for the parties, date of hearing is pre-poned.

The application is disposed of as infructuous.

Main case

Petitioners (plaintiffs) have filed this revision petition under Article 227 Constitution of India for setting aside the order dated 31.07.2018 passed in Civil Suit No.438 of 2007, by Civil Judge (Junior Division), Gurugram, whereby the application under Order I Rule 10 CPC read with Section 151 CPC by newly added defendants/respondent Nos.8 to 10, as well as another application by defendant No.4 (respondent No.4) and others for directing the plaintiffs to accept their offer and obtain land to the extent of their share, on any side of the passage by exercising choice, have been allowed.

The brief facts of the case are that the plaintiffs filed a suit for declaration with a consequential relief of permanent injunction and pleaded that defendant No.1 being co-owner in joint possession of the land bearing khasra No.18, khatoni No.19, Rect.No.4, Killa No.2(7-7), 3 (7-7), Khewat No.19, Khatoni No.20, Rect. No.4, Kila No.8 (8-0), 9 (8-0) total measuring 30 kanal 14 marlas to the extent of 1/4th share, i.e., 7 kanals 13 marlas had sold the said land to the plaintiffs vide sale deed bearing No.1399 dated 09.06.1976. Pursuant to the transaction, the plaintiffs came in actual physical possession and mutation No.587 was also sanctioned in their favour. The defendant No.1,

who was left with no right, title or interest in the said land, dis-honestly and with *mala fide* intentions executed another sale deed bearing No.826 dated 07.06.2004, thereby selling 03 kanals 13 marlas out of the said 1/4th share in favour of defendant No.2 (M/s True Value Buildcon Pvt.Ltd.) for total sale consideration of Rs.6,55,000/-, whereupon mutation No.1687 dated 13.03.2006 was also illegally got sanctioned in favour of buyer company. According to plaintiffs, mutation No.1687 dated 13.03.2006 is based upon vasika No.826 dated 07.06.2004, but this sale deed relates to land comprised in khata No. 312 Rect. No.20, kila No.5 (8-0) to the extent of 10/160th share i.e.10 marlas (300 square yards), and was executed by Satish Chauhan son of Manohar Lal in favour of Mange Ram son of Nand Kishore, thus, mutation No.1687 dated 13.03.2006 sanctioned by defendant No.6 is not related to the suit property or the parties to the suit. The defendant No.2, further, on the basis of mutation No.1687 dated 13.03.2006, sold the land in favour of defendant No.3 (Rajinder Singh son of Kashmir Singh) vide sale deed No.7379 dated 13.03.2006 against the total sale consideration of Rs.6,75,000/- and mutation No.1688 dated 02.04.2006 was also sanctioned in his favour. Similarly, defendant No.3 further transferred the property by executing the sale deed No.7498 dated 20.03.2006 in favour of defendant No.4 against total sale consideration of Rs.4,25,00,000/- and mutation No.1689 was also sanctioned.

As the defendant No.4 started claiming his title over the suit property and also threatened to dispossess the plaintiffs, they filed suit for declaration that the defendants have no right, title or interest in the suit property and the sale deed executed by defendant No.1 in favour of defendant No.2, as well as subsequent sale deeds dated 07.06.2004, 13.03.2006 and

20.03.2006 and the respective mutations are *null, void and ab initio*. As a consequential relief, a decree for permanent injunction restraining the defendants from alienating the suit property and dis-possessing the plaintiffs from the suit land was also prayed for.

The suit is being contested by defendant No.1, who filed his written statement and raised various preliminary objections regarding maintainability, cause of action, *locus standi* etc and on merits, he even denied the execution of the sale deed bearing No.1399 dated 09.06.1976 in favour of plaintiffs. He also denied the execution of sale deed bearing No.826 dated 07.06.2004 in favour of defendant No.2 (M/s True Value Buildcon Pvt.Ltd.), and further pleaded that plaintiffs and other defendants have no right, title and interest in the suit land and the sale deed No.826 dated 07.06.2004 and mutation No.1687 dated 13.03.2006; sale deed No.7498 dated 20.03.2006 and mutation No.1689 dated 02.04.2006 and subsequent mutations are illegal, void *ab initio*. He prayed for dismissal of the suit.

The defendant No.4 filed separate written statement, who also raised preliminary objections regarding maintainability of the suit as some of the plaintiffs are suing as legal representatives of their predecessor-in-interest, who expired before the filing of the suit; lack of proper court fee; delay; non-joinder of necessary parties etc. Besides, it was claimed that plaintiff No.6 sold away his inherited share through registered sale deed bearing vasika No.5922 dated 09.01.2006 in favour of M/s Hardcore Realtors Pvt.Ltd and mutation No.1649 dated 03.02.2006 was also sanctioned. Similarly, heirs of Mukh Ram (plaintiffs 2(a) to (f)) also sold their share vide sale deed bearing No.5923 dated 09.01.2006 in favour of M/s Ornamental Relators Pvt.Ltd and mutation

No.1655 dated 06.02.2006 was also sanctioned. Further, plaintiff Nos.3, 7 and 8 and heirs of plaintiff Nos.1 and 5 also sold their respective shares in the suit land through vasika No.5925 dated 09.01.2006 in favour of M/s.Golden View Builders Pvt. Ltd., whereupon mutation No.1656 dated 06.02.2006 stands sanctioned. According to defendant No.4, the revenue entries, which are more than 12 years old have not been disputed by the plaintiffs and they are left with no land in their name, whereas the 3/4th share owned by co-owners, namely, Battu, Saman and Lakhi sons of Kulhad was sold by them through registered sale deed bearing No.7299 dated 09.03.2006 in favour of M/s True Value Buildcon Pvt. Ltd. (defendant No.2). Subsequently, the defendant No.2 vide registered sale deed dated 13.03.2006 sold the property in favour of defendant No.3, who further sold this property in favour of defendant No.4 by executing sale deed No.7478 dated 20.03.2006, against a sale consideration of Rs.4.25 crores. As per written statement, on the strength of the above sale deeds, the right, title and interest in the property vested with defendant No.4 and its associate companies. Later, Director, Town and Country Planning Haryana, Chandigarh issued licence No.100 on 15.05.2008 in favour of defendant No.4 and its associate companies for developing the suit land as a group housing project and the buyers being *bona fide* purchasers had no knowledge of the alleged defect in the title of their vendors. The other averments in the plaint were also denied and in the end, it was prayed that suit be dismissed.

During the pendency of the suit, defendant No.4 filed application for issuance of directions to the plaintiffs to obtain 1/4th share of the land on any side abutting the passage, whereas the petitioners (plaintiffs) filed an application under Order XII Rule 6 CPC for decreeing the suit on the basis of

the admission of defendants.

Thereafter, another application under Order I Rule 10 CPC read with Section 151 CPC was filed by respondent Nos.8 to 10, namely, M/s Ornamental Realtors Pvt.Ltd., M/s Hardcore Pvt.Ltd., and M/s Golden View Builders Pvt.Ltd. respectively on 23.07.2018 seeking their impleadment claiming themselves to be the associate companies of defendant No.4, who had purchased 3/4th share for a sale consideration of Rs.4,25,00,000/- from defendant No.3 and remaining 1/4th share was purchased by them vide sale deeds bearing Vasika Nos. 5922, 5923 and 5925 all dated 09.01.2006 and necessary mutations were also sanctioned. They too supported the stand of defendant No.4 being bonafide purchasers and also conceded to the plaintiffs' share to the extent of 1/4th and joined defendant No.4 in his application offering the plaintiffs to accept the 1/4th share on any side of the passage.

Both the applications filed by the defendants were contested by the plaintiffs by filing their respective replies and the Civil Judge (Junior Division), Gurugram allowed the same vide common order dated 20.08.2018. Hence, this revision petition.

Mr. Amit Jain, learned senior counsel appearing on behalf of petitioners/plaintiffs has argued that once the suit for declaration filed by the plaintiffs is founded upon the sale deed No.1399 dated 09.06.1976 and the share of the plaintiffs is not disputed by the respondents/defendants, the application on behalf of the defendants giving the choice to the plaintiffs to choose a part of the suit property to the extent of 1/4th share is not maintainable. According to him, once the title acquired by the defendants is being questioned through the civil suit, the application by defendants could not

have been allowed by the trial Court by accepting their stand, who are yet to prove the validity of their title. He submits that though defendant No.4 has further disposed of the suit property in favour of defendant Nos.4-A, 4-B and 4-C, and they have also admitted the plaintiffs to be their co-sharers, therefore, the approach adopted by the trial Court in accepting the said application by defendant Nos.4-A, 4-B and 4-C is erroneous as in the present suit, the issue of partition of the suit land is not raised by any of the parties. He submits that the application filed by plaintiffs under Order 12 Rule 6 CPC, which is based on the admission of the defendants relating to the 1/4ths share in the suit property is yet to be decided, therefore, the impugned order be set aside.

On the other hand, Mr. Aashish Chopra, learned senior counsel appearing for the contesting respondents has argued that the share of the plaintiffs is not disputed and they are at liberty to choose their 1/4th share, as it would facilitate the parties to enjoy their respective shares in the property independently. He submits that the application under Order 1 Rule 10 CPC filed by defendant Nos.4-A, 4-B and 4-C is rightly allowed as they have acquired right, title and interest in the property, therefore, the impugned order does not warrant any interference. According to him, the claim of the plaintiffs to the extent of 1/4th share in the suit property is not disputed by defendants and Mr.Chopra, learned Senior counsel conceded that the application filed by plaintiffs under Order XII Rule 6 CPC is yet to be decided. He submits that by virtue of subsequent sale deed No.826 dated 07.06.2004 only title of 3 kanals 13 marlas had been sold to defendant No.2, therefore, the claim of the plaintiffs is confined to that extent only, but the plaintiffs are unnecessarily dragging on with this litigation only to harass the defendants. He prays that the revision

petition be dismissed.

After hearing the learned Senior counsel for the parties, considering the pleadings and material on record, this court finds that the rival parties have relied upon the respective sale deeds as well as consequent mutations in their favour, to claim their right, title or interest in the suit property. However, the validity and correctness of the said documentary material is yet to be ascertained by the trial Court, because the parties are yet to adduce their evidence. Through the impugned order, two different applications, i.e. one filed by respondent Nos.8 to 10 herein, who prayed for their impleadment in the suit, and second filed by defendant No.4 along with respondent Nos.8 to 10 praying for a direction to plaintiffs to accept their joint offer of choosing land to the extent of their 1/4th share from total land holding of the applicants have been decided together.

At the very outset, this Court finds that these two applications ought to have been decided by the trial Court separately as the applicants in the application under Order I Rule 10 CPC should not have joined defendant No.4 in making the above offer to the plaintiffs, much less in the absence of their written statement to the plaint filed by the plaintiffs. In this way, the trial Court wrongly entertained the second application on behalf of those applicants, who were strangers to the suit. However, considering the merits of the application regarding impleadment of respondent nos.8 to 10 in the suit, this Court is of the opinion that as they have claimed their right, title and interest in the suit property on the basis of documentary material, therefore, their presence would be necessary for effective adjudication of the suit. Thus, to that extent, the impugned order does not warrant any interference.

Now, while considering the validity of the other part of the impugned order, this Court finds that once the plaintiffs have set up a case to question the title of the defendants, and keeping in view the stand of the defendants also who have feigned ignorance about defect in the title of their vendor by setting up a plea of *bonafide* purchaser, it is apparent that the rights of the parties in the suit property can only be established after evaluation of the evidence including sale deeds etc. Unless the respondents hold clear title of the land allegedly owned by them, they are not justified in making such an offer to the plaintiffs only in the garb of settlement of dispute, and the Civil Judge (Junior Division) Gurugram without properly appreciating the facts and law on the subject hastily accepted the prayer by exceeding its jurisdiction. Thus, the trial Court fell in serious error of law by accepting the prayer of defendant No.4 and other defendants by directing the plaintiffs to accept their offer of choosing the piece of land to the extent of their 1/4th share, as the same is beyond its jurisdiction. Needless to observe here that any settlement or compromise between the litigants or other parties has to be entered into voluntarily, founded upon their free will and consent. Apart from it, the settlement must be lawful and should not be void or voidable under the Indian Contract Act, 1872, but if, the essential ingredient of “free consent” on behalf of one of parties is missing, the said settlement cannot be deemed to be lawful. There is no provision in the Code of Civil Procedure which empowers the Courts to direct a party to accept the claim or offer of the rival party.

Further, a reading of the impugned order shows that not only the impleadment of respondent Nos.8 to 10 in the suit has expanded the field of adjudication, but the other observations by the trial Court that this decision

shall have no bearing on the criminal proceedings against the defendants, if the same are initiated or are intended to be initiated by the plaintiffs also makes it clear that the offer, even if, accepted in compliance of impugned order would not end in settlement of dispute amongst the parties. The impugned order further indicates that the application filed by plaintiffs under Order XII Rule 6 CPC is still pending adjudication, therefore, before deciding the same, the Court could not have directed the plaintiffs to accept the offer of the defendants.

In view of the above discussion, this Court has no hesitation in holding that this part of the impugned order suffers from grave illegality and impropriety.

Resultantly, the revision is partly allowed and the impugned order only to the extent of accepting the application by defendant No.4 and others is set aside, and the said application is dismissed.

(MANOJ BAJAJ)
JUDGE

22.08.2022

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