

2023:PHHC:149064

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-229-2016 (O&M)
Date of Decision: November 22, 2023

Malkiat Singh

...Petitioner

Versus

Manjit Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjay Verma and Mr.Pavesh, Advocates
for the petitioner.

Mr.Vivek Aggarwal and Mr.Kewal Krishan, Advocates
for the respondent.

ARCHANA PURI, J.

CM-18437-CII-2016

The present application has been filed for placing on record the
Annexure R-1 to R-5.

In view of the averments made in the application, same is
allowed and the requisite documents are taken on record.

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Challenge in the present revision petition is to the order
16.12.2015 (Annexure P-5) passed by learned Court below, whereby, an

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application under Order 1 Rule 10 CPC, for impleading Balbir Singh, Nishan Singh and Ravail Kaur, as defendants, was dismissed.

The essential facts, as culled from the paperbook are as follows:-

That, initially, petitioner-plaintiff Malkiat Singh filed a suit against his brother Manjit Singh, thereby, seeking declaration to the effect that judgment and decree dated 12.06.1993 passed in CS No.636 of 1993, titled as 'Manjit Sinvh vs. Malkiat Singh', as well as mutation sanctioned on the basis thereof, to be illegal, null and void and not binding upon rights of the present plaintiff. However, in the written statement, respondent-Manjit Singh, who was defendant before the Court below, took the plea about the petitioner to have made appearance in the Court and having engaged the counsel and filed written statement in CS No.636 of 1993 and rightly, legally and validly suffered the decree dated 12.06.1993 and mutation thereof, was sanctioned in favour of the answering defendant and therefore, the same is legal and valid.

However, when the said suit was at the stage of evidence, the respondent-defendant had filed an application for seeking permission to amend the written statement, copy whereof is Annexure R-2 and vide proposed amendment, he intended to insert in the written statement about the suit land, now to be owned and possessed by Ravail Kaur, wife of Balbir Singh, to whom he had sold the suit property vide sale deed No.6036 dated 04.12.2007 value valuable consideration and mutation having already sanctioned, on the basis thereof and that the plaintiff had failed to challenge

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the said sale deed and mutation and even, did not implead the said purchaser, in the absence of which, no relief can be granted. Further, it is pertinent to mention that the said application was dismissed as withdrawn, on the basis of the statement got recorded by learned counsel for the defendant-respondent on 25.05.2015. Copy of the order, so passed is Annexure P-3.

It was only thereafter, an application for seeking amendment of the plaint as well as application under Order 1 Rule 10 CPC, conjointly was filed by the petitioner-plaintiff, at first instance. However, the same was dismissed as withdrawn and thereafter, separate application was filed, one under Order 6 Rule 17 CPC and another under Order 1 Rule 10 CPC. However, the present revision petition relates to impugned order passed on an application under Order 1 Rule 10 CPC.

In the application, it was asserted that Manjit Singh had committed calculated fraud, forgery and cheating with the Court, as he did not disclose in the written statement, about himself to have transferred the suit property, in favour of Ravail Kaur, wife of Balbir Singh, vide registered sale deed dated 04.12.2007 and mutation having sanctioned thereupon and had also not disclosed regarding sale deed No.3611 dated 04.07.2005, in the name of Balbir Singh and Nishan Singh, sons of Darshan Singh. It was only in pursuance of filing of an application for amendment of written statement, that the petitioner came to know about the aforesaid fact and therefore, he now intends to implead, Balbir Singh, Nishan Singh and Ravail Kaur the purchasers of the suit land from defendant-Manjit Singh, as defendants No.2, 3 and 4.

After hearing learned counsel for the parties, vide impugned order dated 16.12.2015, the application was dismissed. The reason assigned for dismissal of the application is that the said application has been filed after 4-5 years since the date of knowledge and therefore, the transferees, as such, cannot be allowed to be impleaded.

Learned counsel for the parties heard.

Order 1 Rule 10 CPC enables the Court, to add any person as a party, at any stage of proceedings, if the person, whose presence before the Court is necessary, in order to enable the Court to effectively and completely adjudicate upon and settle all the question, involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision of the Code.

Before proceeding further, it is essential to take note of certain facts. The proposed parties to the suit are Balbir Singh, Nishan Singh and Ravail Kaur. From the material coming forth, it is evident that the sale deed, on the basis whereof, they are stated to be essential parties, are dated 04.12.2007 and 04.07.2005. However, the suit was filed by Malkiat Singh s/o Sujan Singh against his brother Manjit Singh, of which the present revision is an offshoot, as evident, on 22.02.2010. The written statement was filed, thereafter by the respondent-defendant. However, in the written statement, he did not make the disclosure of the transfer of the land in question, in favour of proposed defendants. Moreover, it was at a later stage that the application for seeking amendment of the written statement was filed and that too was dismissed as withdrawn vide order dated 25.5.2015,

copy whereof is Annexure P-3.

In the given circumstances, it becomes crystal clear that the sale deeds, on the basis whereof, the plaintiff-petitioner intends to implead additional defendants, were executed prior to the institution of the suit. Though, it is stated that jamabandi was obtained on 18.01.2010 i.e. prior to the filing of the suit, which contained recital, but however, it was overlooked, at the instance of the petitioner-plaintiff. Even then, it was required, on the part of the defendant also, to disclose about the transfers, at initial stage, at the time of filing of the written statement, but however, he has not done so.

Solely, on account of delay, the claim to assert, by virtue of application for impleadment of additional parties, as such, cannot be shut out. There is no requirement of law that such an application must be made by any particular stage of the trial, though, definitely, there was overlooking of the fact of the recitals in the jamabandi, copy whereof, was obtained earlier, but at the same time, it ought to be considered that the transfer of land, as such, is not disputed by the respondent-defendant himself, who had earlier filed an application for seeking amendment, to so assert, but however, the same was withdrawn. Given the same, so much of silence maintained on the part of respondent-defendant, also given an impression of suppression of essential fact, on his part.

In the given circumstances, definitely, the rights of the petitioner are jeopardized. Firstly, the petitioner shall be made to litigate against respondent-defendant and thereafter, on the basis of the sales having

already effected, would enter into next round of litigation with the proposed additional defendants. Considering the rights of the petitioner, as such, to be jeopardized and also for effective decision of the case and to plug multiplicity of the litigation, the proposed defendants are necessary parties to be impleaded, more particularly, when it cannot be ruled out, as to whether, they are in know of this litigation or not.

Such being the aforesaid fact situation, the impugned order is hereby set aside and the application under Order 1 Rule 10 CPC filed by the petitioner-plaintiff stands allowed. In pursuance of allowing of the aforesaid application, learned Court below is hereby directed to comply with the provisions of Order 1 Rule 10 clause (iv) CPC, thereby, giving an opportunity to place on record the amended plaint and proceed further, for summoning the additional defendants and providing of the copy of the amended plaint to all the defendants.

Hence, the present revision petition stands allowed in aforesaid terms.

November 22, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No