

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.3293 of 2017 (O&M)

Date of Order:20.11.2023

Balwinder Singh

.Petitioner

Versus

Sunil Kumar and others

..Respondents

C.R. No.3464 of 2017 (O&M)

Balwinder Singh

.Petitioner

Versus

Sunil Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun K Kaundal, Advocate
Mr. Sudershan Thakur, Advocate
for the petitioners (in both the cases)

Mr. S.K.Jain, Advocate and
for the respondents.

ANIL KSHETARPAL, J

1. Through these two revision petitions, two different orders passed by the First Appellate Court on 23.02.2017, are called in question.

Vide Annexure P-7, the First Appellate Court has permitted the amendment of the plaint at the first appellate stage, whereas vide order Annexure P-8, the court has rejected the application for dismissing the appeal as infructuous.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. Two different cross suits were filed, one by Sh. Balwinder Singh and the second by Sh. Sunil Kumar and another. In both the suits, the

plaintiff(s) prayed for grant of decree of permanent injunction. Sh. Balwinder Singh claims that he is owner in possession of the property on the basis of a registered sale deed dated 03.02.1999, which was registered on 04.02.1999.

4. On the other hand, Sh. Sunil Kumar and Smt. Alka Jain claim that they have purchased the property vide two sale deeds dated 06.08.2001. The suit filed by Sh. Balwinder Singh was decreed, whereas the suit filed by Sunil Kumar and another was dismissed. Two appeals were filed before the First Appellate Court.

5. During the pendency of the aforesaid appeals, Sh. Sunil Kumar and another filed an application for permission to amend the plaint in their suit and written statement in the suit filed by Sh. Balwinder Singh. Sh. Sunil Kumar and another wants to incorporate the name of the previous owners of the suit property and to disclose the details as to how the property has changed hands, (i.e. the owners).

6. On the other hand, Sh. Balwinder Singh filed an application for dismissal of the appeal as infructuous. The application for amendment of the plaint and the written statement filed by Sh. Sunil Kumar and another has been allowed, whereas the application filed for dismissal of the appeal filed by Sh. Balwinder Singh has been dismissed.

7. At the time of hearing of these revision petitions, the learned counsel representing the parties have disclosed that Sh. Balwinder Singh has filed a suit for possession of the property because he claims that he has been dispossessed during the pendency of the suit.

8. On the other hand, Sh. Sunil Kumar and another have filed the counter claim in the suit filed by Sh. Balwinder Singh for grant of

possession. In the aforesaid counter claim, Sh. Sunil Kumar and another has challenged the correctness of sale deed dated 03.02.1999, executed in favour of Sh. Balwinder Singh.

9. The suit filed by Sh. Balwinder Singh is stated to have been dismissed for non-prosecution. However, the counter claim filed by Sh. Sunil Kumar and another is pending.

10. It may be noted here that the First Appellate Court while allowing the amendment has also remanded the case back to the trial court for deciding it afresh along with the suit filed by Sh. Balwinder Singh for grant of decree of possession.

11. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

12. On a court question, the learned counsel representing the parties admit that the relief of injunction as prayed for in both the previous suits has been rendered infructuous because Sh. Balwinder Singh admits his dispossession. It is also not in dispute that Sh. Balwinder Singh has already filed a suit for possession which was dismissed in default. He plans to file an application for restoration.

13. The validity of the various sale deeds is already the subject matter of challenge in the subsequent proceedings, namely, the suit for possession filed by Sh. Balwinder Singh and counter claim filed by Sh. Sunil Kumar and another.

14. Keeping in view the aforesaid facts, it would not be in the interest of justice to multiply the litigation. The correctness of the order passed by the First Appellate Court remanding the case back to the trial court only on the ground that the application for permission to amend the

plaint and the written statement filed by Sh. Sunil Kumar and another in two different proceedings has been allowed is debatable. However, this court is of the view that efforts must be made to avoid wastage of the court's precious time on unnecessary litigation. Once the comprehensive suit for possession has been filed by Sh. Balwinder Singh and Sh. Sunil Kumar and another have filed their counter claim, the entire dispute can be decided in the aforesaid proceedings holistically.

15. Keeping in view the aforesaid facts and discussion, both the revision petitions are disposed of with the observations that both the previous suits filed for grant of decree of permanent injunction shall be consigned to the record room with liberty to the learned counsel representing the parties to take all the necessary objections in the subsequent suit and cross objections.

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

November 20, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO