

CM-4216-CII-2013 in/and
CR-5019-2017 (O&M)

. 2023:PHHC:062399

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4216-CII-2013 in/and
CR-5019-2017 (O&M)
Date of Decision :01.05.2023

Abid

...Petitioner

Versus

Hashim Khan @ Kallu

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sumeet Jain, Advocate for petitioner.

Mr. R.S. Bains, Senior Advocate with
Ms. Aarushi Garg, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-4216-CII-2013

Present application has been filed for placing on record documents Annexures R-1 to R-9 on behalf of the respondent.

As prayed for, application is allowed.

Documents Annexures R-1 to R-9 are taken on record subject to all just exceptions.

CR-5019-2017

1. Present revision petition has been filed challenging order dated 12.05.2017 (Annexure P/5) passed by the Civil Judge (Senior Division),

Mewat by which, application filed by the petitioner-plaintiff under Order 6 Rule 17 of the CPC has been dismissed.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The alleged agreement to sell dated 21.05.2015 was entered between the petitioner-plaintiff and respondent-defendant according to which, land in question was sold for the consideration of Rs.2,40,000/-. As per the petitioner-plaintiff, the sale deed was to be executed after the respondent-defendant became owner of the property in question for the reason that at the time of execution of the agreement to sell even the respondent-defendant was claiming ownership of the land in question on the basis of the agreement to sell with the previous owner.

4. As per the allegation of the petitioner-plaintiff, the possession of the property in question was with him and, therefore, in order to stop the respondent-defendant from interfering in his possession, a suit was filed by the petitioner-plaintiff with the prayer that the respondent-defendant be restrained from entering in his peaceful possession.

5. During the pendency of the said suit, according to the petitioner-plaintiff, the respondent-defendant succeeded in a suit so as to get the ownership of the property in question keeping in view the judgment and decree dated 30.03.2016 passed by the Additional Civil Judge (Senior Division), Mewat and on the basis of the said judgment and decree, even the property has already been transferred in the name of the respondent-defendant by a sale deed dated 03.04.2019.

in view the said fact, which came into existence during the pendency of the suit filed by the petitioner-plaintiff, an amendment was sought so as to get the alleged agreement to sell in question executed but the trial Court has dismissed the application by the impugned order dated 12.05.2017 (Annexure P/5) on the ground that nature of the suit will change and, hence, the said amendment cannot be allowed.

7. Learned counsel for the petitioner-plaintiff argues that once a particular fact has come into existence during the pendency of the suit, the same should have been taken into account by the trial Court so as to allow the amendment rather than asking the petitioner-plaintiff to file a separate suit for the execution of the agreement to sell in question.

8. Learned Senior counsel appearing for the respondent-defendant submits that though, it is a matter of fact that respondent-defendant had succeeded in suit qua the same property keeping in view the judgment and decree passed by the competent Court of law dated 30.03.2016 and has already got registered the said land but respondent-defendant is disputing the agreement to sell in question, which is being relied upon by the petitioner-plaintiff so as to claim execution of the said agreement by seeking amendment in the suit hence, impugned order dated 12.05.2017 passed by the trial Court declining the amendment of the suit is perfectly valid and legal and is liable to be upheld especially when an appeal is still pending against the judgment and decree dated 30.03.2016 in pursuance to which the respondent-defendant is treated to be the owner of the property in question.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. It is not disputed fact that initially the suit filed by the petitioner-plaintiff for permanent injunction is also based upon the alleged agreement to sell dated 21.05.2015 on the ground that possession of the property in question was with the petitioner-plaintiff and the said agreement to sell was to be executed after the defendant-respondent will become owner of the said property. Once, it is a conceded position that respondent-defendant has become owner of the property in question keeping in view the judgment and decree dated 30.03.2016 passed by the competent Court of law and the sale deed has already been executed qua the said property in question through the Court, the nature of the suit though, will change but as both the suits as well as the basic claim revolves around the agreement to sell in question, the amendment should have been allowed so as to reduce the multiplicity of the litigation.

11. Keeping in view the above, without opining anything on the merits qua the agreement to sell in question or possession of the property in question in any manner, impugned order dated 12.05.2017 (Annexure P/5) passed by the Civil Judge, (Senior Division), Mewat is set aside and the application filed by the petitioner-plaintiff seeking amendment of the suit is allowed. Trial Court is directed to proceed into the matter in accordance with law hereinafter by giving due opportunity to the parties to present their case in accordance with law.

May 01, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No