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

**C.R No. 3566 of 2019 (O&M)
DATE OF DECISION: 09.05.2023**

**Sandeep Kumar Mehra (since deceased and now represented through
LRs and another ...Petitioners**

Versus

**Raj Kumar Mehra (since deceased and now represented through LRs
And others ...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sharad Mehra, Advocate,
For the petitioners.

Mr. V. K. Sandhir, Advocate,
For LRs of respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 22.04.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Amritsar, vide which application filed by petitioner/plaintiff under Order 1 Rule 10 CPC, impleading co-sharers of property in dispute as defendants in civil suit, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1 Plaintiff/Petitioners have filed a suit (Annexure P-2) before learned Court below seeking declaration to the effect that they are owners of suit property by way of inheritance from estate of Smt.Ram Lubhai w/o late Shri Jai Kishan Dass Mehra (deceased) and from the estate of Shri Jai Kishan Dass Mehra s/o late Soba

Ram. Consequential relief of permanent injunction and mandatory injunction has also been sought.

2.2 Upon notice, defendants No.1 and 2 appeared and filed joint written statement.

2.3 Plaintiff/petitioners herein moved an application under Order 1 Rule 10 CPC alleging that properties in question have been sold in part, the purchasers are co-sharers and as such, they are necessary parties and prayed for their impleadment.

2.4 Reply to application was filed by defendants taking objection that application is vague as suit itself is not maintainable. Suit has been filed by Sandeep Kumar being attorney of Kishan Kumar Mehra who has died and as such the alleged power of attorney has also become ineffective. Properties were sold long back. Now case is pending for defendants' evidence and application has been filed intentionally to cause delay.

2.5 Learned trial Court, vide order dated 22.04.2019 (Annexure P-1), dismissed the said application.

3. Learned counsel for petitioners would argue that the purchasers of properties are necessary parties as they are co-sharers of property in question. If the said subsequent vendees are added as party, no prejudice will be caused to defendants as they have already lost their interest in property.

4. Learned counsel for respondent strenuously opposes instant petition and supports the impugned order and would argue that same is based on cogent findings rendered by learned trial Court.

5. I have heard learned counsel for parties and have gone through the records.

6. The impugned order is premised, *inter alia*, on the following reasoning:

“xxx

5. *The perusal of the record shows that the present suit has been filed by the plaintiffs claiming to be the co-owners in the suit property on the basis of natural succession. It was pleaded by the defendants in their written statement that the suit was not maintainable because the suit property had already been transferred by the defendants to other persons before the institution of the suit. In fact, this fact was itself incorporated in the plaint by the plaintiffs that the suit property was already sold by defendants no.1 to 7 in favour of some other persons namely Rajesh Kumar, Kimti Lal and Dwarka Dass. When the plaintiffs were aware of the fact that the suit property was already sold to other persons, then those persons should have been impleaded as defendants by the plaintiffs at the time of filing of the suit. As the plaintiffs failed to do so for reasons best known to 'hem, the suit filed by the plaintiffs was clearly bad for non-joinder of necessary parties. Now, it appears that the present application has only been filed by the plaintiffs to fill that lacuna in their case. The plaintiffs were already aware at the time of filing of the suit that the suit property was already sold by the defendants. If at that time, the vendees of the suit property were not impleaded as defendants in the suit, then there exists no ground at this stage to allow the present application. This is also because specific plea had been taken by the defendants in their written statement regarding the sale of the suit property to the other persons, but despite this fact no action was taken by the plaintiffs and the present application has been filed at a much belated stage when the case was fixed for the evidence of the defendants. No explanation of either this delay, or of the fact that why the subsequent purchasers were not made party initially has been given by the plaintiffs.*

6. *It has been also pleaded by the plaintiffs that certain sale deeds were executed during the pendency of the suit and those purchasers were also required to be impleaded as defendants. In this regard, it was held by the Hon'ble Supreme Court of India in the case of **Sarvinder Singh vs Dalip Singh (1996)5 SCC 539**, that*

a transferee pendente lite does not have an automatic right to be impleaded as a party in the suit. The Apex Court further held that a necessary party is one whose presence is absolutely necessary and without whose presence the issue involved cannot be effectually and completely adjudicated upon and decided between the parties. It was further held that when a sale of the property is made during the pendency of the suit, the subsequent transferee does not become a necessary party automatically as the subsequent sale is hit by the principle of lis pendens.

7. *Therefore, applying the said principle of law, it can be held that even if part of the suit property was sold during the pendency of the suit, the subsequent purchaser does not become a necessary party to the suit and hence, there is no requirement in law to implead that party as a defendant in the suit. The plaintiffs have also sought to implead the legal heirs of defendant no.3 as a party to the suit. However, no explanation has been given that why they were not made a party earlier. The plaintiffs were having the knowledge at the time of filing of the suit that the husband of defendant no.3 had already died, and so, her children should have been impleaded as party at the time of filing of the suit only. Now when the case is fixed for defendant evidence, the plaintiff cannot suddenly turn up and say that he had forgotten to implead certain persons as party to the suit. In fact, it transpires from the record that the present application is only a device being used by the plaintiffs to delay the proceedings and the same is not in the interest of justice. The present application was filed by the plaintiffs on 04.02.2019, i.e., after more than six years of the filing of the present suit, but the counsel for the plaintiffs did not advance arguments on the application despite availing six opportunities on one pretext or the other. Taking this fact into consideration as well, the court believes that the only objective behind filing the present application was to delay the present case and to cover up the lacuna that the suit was bad for non-joinder of necessary parties. As such the application at hand is dismissed being totally meritless. Now to come up or 25.04.2019 for evidence of defendants.”*

7. Indisputably sale of property in question has taken place prior to institution of suit and it has come on record that in the written statement same facts were also asserted and plaintiffs had not taken any

steps on any earlier occasion for impleadment of subsequent vendees, the title of whose predecessor-in-interest is undisputed in the present suit proceedings.

8. Having heard arguments of learned counsels for parties, I am of the opinion that there is no room for interference in the aforesaid valid reasons recorded by the learned Tribunal.

9. No material irregularity, either in law or procedure, has been committed by the learned Tribunal, so as to exercise extraordinary revisional jurisdiction herein. Order impugned herein has been passed as per the ratio enunciated in the judicial precedents cited therein.

10. Contentions in the petition herein, raised before me were also raised before, duly considered and rejected by learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Court below.

11. In the premise, instant revision petition is dismissed.

12. Pending application(s), if any, shall also stand disposed of.

May 09, 2023
Shalini

(ARUN MONGA)
JUDGE

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