

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1961-2021 (O&M)

Date of decision: 14.09.2023

Reserved on: 06.09.2023

Major Harinder Singh Gill Retd.

..Petitioner

Versus

Kuldip Singh and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ramesh Chander Sharma, Advocate and
Mr. A.P.S.Shergill, Advocate for the petitioner

Mr. Puneet Jindal, Sr. Advocate with
Ms. Malvi Aggarwal, Advocate for respondent no.1

Mr. Akshay Jain, Advocate for respondent no.2- SBI

ANIL KSHETARPAL, J

1. Through this revision petition, the petitioner assails the correctness of an interlocutory order passed by the First Appellate Court, while dismissing the petitioner's application for dismissal of the appeal being defective on the grounds that under the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') Sh. Mehar Singh, father of Sh. Kuldip Singh- respondent No. 1, who is a necessary party, has not been impleaded in the appeal, has been challenged.

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

3. Late Sh. Mehar Singh was father of respondent No. 1- Sh.Kuldip Singh. Late Sh.Mehar Singh was impleaded as a defendant No. 4. The suit qua defendant No. 2 to 5 was dismissed under Order IX

Rule 2 CPC vide order dated 7th April, 1992. Thereafter, Sh. Kuldip Singh himself appeared in the case. The trial court found that Sh. Mehar Singh was only a proforma defendant in the suit as no relief was claimed against him in the suit. The trial court found that the sale of the property of the plaintiff by defendant No. 1 to the extent of 1/3rd share in execution No. 23 of 26th March, 1987 in the suit titled as 'State Bank of India versus M/s Gill Brick Kiln and others' is null and void, being without jurisdiction and is a result of fraud and consequently is not binding on the plaintiff. Sh. Kuldip Singh filed the first appeal against the judgment and decree passed by the trial court. Before the First Appellate Court he impleaded Major Harinder Singh Gill, plaintiff in the suit, as defendant No. 1 whereas the State Bank of India M/s Gill Brick Kiln and Smt Narinder Gill were impleaded as the proforma respondents. However, Sh. Mehar Singh, who was already dead was not impleaded as party, which resulted in filing of an application by respondent No. 1, however the same has been dismissed by the First Appellate Court. The correctness whereof has been assailed in the present revision petition.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the judgments relied upon by them. The learned counsel representing the petitioner has vehemently contended that the memo of parties of the First Appellate Court is required to be in consonance of the memo of parties of the trial court. It is submitted that before the First Appellate Court, the appellant has no right to delete any party, even if the said party has

died. He relies upon the judgment passed in **Ch. Surat Singh (dead) and others vs Manohar Lal AIR 1971 SC 240** and the order passed by the Division Bench of the Kerala High Court in IA No. 1 of 2022 in MFA (Forest) No.161 of 2006 decided on 5th December, 2022.

5. On the other hand, the learned senior counsel representing the respondent-defendant No. 5 contends that late Sh. Mehar Singh was impleaded only as a proforma defendant and suit qua him was dismissed for non prosecution under Order IX Rule 2 CPC vide order dated 7th April, 1992. He further submits that Sh. Kuldip Singh-respondent No. 1 is son of Late Sh. Mohar Singh. He also submits that since no relief has been sought against Late Sh. Mehar Singh, therefore, he is not impleaded as a party.

6. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties. In fact, it would have been more appropriate for the parties to object to the maintainability of the appeal at the time of the final hearing, which would have enabled the First Appellate Court to examine the fact “whether Late Sh. Mehar Singh was required to be impleaded as necessary party or not?” At that stage, if the court would have found that late Sh. Mehar Singh was a necessary party and an opportunity would have been given to the appellant to implead him. However, the petitioner filed the application and the impugned order was passed.

7. As already noticed, the court of first instance has found that no relief against Late Sh. Mehar Singh was sought in the plaint and therefore, he was only a proforma defendant. Moreover, in 1992 suit qua

Sh. Mehar Singh was dismissed. Moreover Sh. Kuldip Singh respondent No. 1 is his son. Hence, at this stage, it would not be appropriate to finally opine on the effect of non-impleadment of Late Sh. Mehar Singh, as a party respondent. It would be more appropriate if the aforesaid objection is left open to be decided by the First Appellate Court while finally deciding the appeal. This Court has also carefully read the judgment in **Ch. Surat Singh's case (supra)**. In the aforesaid case, during the pendency of the appeal before the High court, Surat Singh died and his legal representatives including Lieutenant Col. Yadav were brought on record. However, while filing the appeal before the Supreme Court Col. Yadav was not made a party to the suit. In that context, the Supreme Court dismissed the Appeal. This Court has also carefully read the order passed by the Division Bench of the Kerala High Court in IA No. 1 of 2016. In that case, the Division Bench noticed that various orders are being passed by the Single Bench while removing the objections with respect to bringing on the legal representatives. In that context the Division Bench observed that the dead person should always be shown in the title of the interlocutory application for bringing on record the legal representatives. With highest respect, the aforesaid order is in the context of the peculiar facts of that case.

8. Keeping in view the aforesaid facts and discussion, the revision petition is disposed of with liberty to the petitioner to take up this objection at the time of final hearing of the appeal, which shall be considered independently by the First Appellate Court, uninfluenced by

the observations made by it in the impugned order or by this Court while deciding the present revision petition.

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

14.09.2023
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE