

123. 2023:PHHC:122355
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CR-4553-2023 (O&M)**
Date of decision: 23.08.2023

Khubi Ram Petitioner

Versus

M/s DLF Home Developers Ltd. Respondent

II. **CR-4579-2023 (O&M)**

Khubi Ram Petitioner

Versus

M/s DLF Home Developers Ltd. Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Tanmoy Gupta, Advocate, for the petitioner.

GURBIR SINGH, J.

CM-14156-CII-2023 in CR-4553-2023

CM-14255-CII-2023 in CR-4579-2023

Applications filed for exemption from filing certified/true typed
copies of Annexures P-1 to P-5, are allowed subject to all just exceptions.

CRs-4553 & 4579-2023

The challenge in both these revision petitions filed under Article
227 of the Constitution of India is to the order dated 14.07.2023 (Annexure
P-5) passed by learned Civil Judge (Junior Division), Gurugram vide which
the applications filed by the petitioner-plaintiff under Order I Rule 10 CPC

and under Order VI Rule 11 CPC for impleading the proposed parties as defendants No.2 to 5 and for amendment of the plaint, were dismissed by a common order.

Brief facts as culled out from both the petitions are that the petitioner-plaintiff (hereinafter referred to as “plaintiff”) filed a suit for declaration against the respondent-defendant (hereinafter referred to as “defendant”) that the sale deed dated 02.05.2014 in favour of defendant is illegal, null and void as the vendor of the sale deed, namely, M/s Panthea Builders & Developers Private Limited was having no right, title or interest to sell the suit property to the defendant. The defendant contested the suit, filed written statement raising certain preliminary objections *inter alia* on the ground that the previous litigation was intentionally concealed by the plaintiff.

Learned counsel for the plaintiff has argued that the amendment sought to be incorporated is based on subsequent events and to explain how without compliance of proper procedure, the government departments have issued licences/CLU/RERA/permissions etc. to the defendant by putting at stake the rules and regulations and circumventing stay order already obtained regarding the suit land. The whole dispute pertains to the ownership of the land in question and when the sale deed in favour of defendant is under challenge, then anything arising out of it shall have a bearing and will be subject to the decision of the pending case, and it would also have the effect of revocation of licences which have been granted on the suit land. The parties, as sought to be impleaded as defendants, are necessary for proper

adjudication of the case in hand as they are officers of the government departments.

I have heard learned counsel for the petitioner-plaintiff.

The operative part of the impugned order dated 14.07.2023 reads as under:-

“5. At this juncture, it is pertinent to note that the plaintiff has filed the suit in hand while claiming himself to be the co-sharer in cultivating possession of suit land as tenants/gaer (sic) gair maurusi without paying any rent of the agricultural land. It is submitted that the predecessors in interest of the plaintiff have been coming in cultivating possession of the suit land since time immemorial as darina kasht and have fulfilled conditions for acquiring status of occupancy tenant. The defendant has been shown as the owner but actually plaintiff has acquired ownership of the suit land being in possession over the suit land for more than 30 years. By way of the suit, sale deed No.2561 dated 02.05.2014 and mutation No.3963 in favour of the defendant has been challenged on the ground that M/S Panthea Builders and Developers Pvt Ltd had no capacity to sell the suit land to the defendant. Thus, it is abundantly clear that the title of the defendant is itself under challenge. The validity of license in favour of the defendant emanates from title itself. Hence, when the primary source of title is under challenge no occasion arises to frame issue qua license of the defendant. Also, if the

application in hand is allowed, it would result in change in trajectory of the litigation so as to compel adjudication upon question of license of defendant which is beyond the primary scope of fact in issue. Hence, the applications in hand are dismissed.”

The instant suit is filed by the plaintiff while claiming himself to be the co-sharer in cultivating possession of suit land as tenants/gair maurusi without paying any rent. The suit of the plaintiff for declaration establishing the status as occupancy tenant, was stated to be already pending on the ground that the plaintiff has become owner of the suit property as per Sections 5 & 8 of Punjab Tenancy Act, 1887. By way of amendment, the plaintiff wants to challenge the alleged licence/CLU/RERA/NOC alleged to have been issued by DTCP of State of Haryana in favour of defendant qua the suit land being absolutely invalid, nonest. Further, the plaintiff wants to implead the proposed parties as defendants No.2 to 5 as no proper justice is possible without impleading them.

It is the case of the plaintiff that at the time of preparing for arguments during the pendency of other suit, the necessity of amendment of the plaint and impleading the parties arose. The suit in hand is a simple suit for declaration by declaring sale deed to be treated as null and void. The proposed amendment is necessary and is based on subsequent event.

The proposed amendment is based on different cause of action. The parties proposed to be added are neither necessary parties nor proper parties for the decision of this case. Even if some licence is issued on the

property, then the same has no effect for declaring whether the sale deed is valid or not. The amendment which is necessary for just decision of the case can be allowed. The amendment which is based on fresh cause of action or which is not necessary for just decision of case cannot be allowed. The proposed amendment is beyond the scope of the suit. The question of issuance of licence is not at all in dispute in this case. In the suit whether licence has been issued by the concerned authorities illegally or in accordance with law, is not required to be seen and the plaintiff is not entitled for amendment of the plaint. Since proposed amendment is not necessary so parties to be impleaded are neither necessary parties nor proper parties. Thus, the learned court below has rightly held that the proposed parties cannot be impleaded in the suit.

The impugned order passed by the learned trial Court is in accordance with law and there is no ground made out for interference. Accordingly, both the revision petitions are dismissed.

(GURBIR SINGH)
JUDGE

August 23, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No