

2023:PHHC:113065

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6269-2019 (O&M)

Date of Decision: August 28, 2023

Manu Sharma

...Petitioner

Versus

Deepak and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Manish Mehta, Advocate
for the petitioner.

Mr.Ravi Yadav and Mr.Varun Gupta, Advocates
for respondents No.1 and 2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 03.08.2019 passed by learned Court below, whereby, an application under Order 1 Rule 10 CPC, filed by the petitioner has been dismissed.

The material facts, as culled out from the paperbook are that, initially, contesting respondents No.1 and 2, namely Deepak and Parmod, sons of Shyam Lal had filed a suit on 30.03.2017, against their parents for declaration to the effect that suit property is Hindu Joint, ancestral and coparcenery property of the plaintiffs as well as defendants and they have birth right in the said property and also that defendant No.1 (their father) had

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got passed wrong decree in favour of defendant No.2, with regard to the land measuring 67 Kanals 19 Marlas and also challenged the mutation, based on the same, to be illegal, null and void. Besides the same, respondents No.1 and 2 (who were plaintiffs before the Court below) had also challenged the sale deeds dated 12.05.1999 and 06.05.2008, got executed in favour of defendant No.3, 4 and 5, respectively, without any valid sale consideration.

During the pendency of the said suit, petitioner Manu Sharma, filed an application under Order 1 Rule 10 CPC, thereby, asserting that he had purchased 8 Kanals of land, out of the total land of 101 Kanal 6 Marlas, vide sale deed 16.05.2017 from Smt.Gindori, wife of Shyam Lal (who is defendant No.2 before the Court below). In the said application, it is asserted that the present suit has been filed in collusion with Smt.Gindori, who is mother of respondents No.1 and 2-plaintiffs. When the deal was struck, with regard to the land, so purchased by the petitioner, the plaintiffs were aware of it and they were also in the knowledge of the sale deed, having executed and registered. So, the petitioner is a necessary party.

However, in reply, the plaintiffs had objected to the application, while stating that no sale deed was ever executed by defendant No.2 i.e. Smt.Gindori, in favour of the petitioner and no consideration had passed on. It is submitted that vide order dated 16.05.2017, the Court had directed the parties to maintain status quo, regarding alienation over the suit property, in the presence of Smt.Gindori, who had made appearance in the Court on 01.04.2017. On that very day, the sale deed was executed and therefore, the petitioner is not a bonafide purchaser.

After hearing learned counsel for the parties, the application under Order 1 Rule 10 CPC was dismissed.

Feeling aggrieved by the aforesaid order of dismissal of the application, the petitioner had filed the present revision petition.

Learned counsel for the parties heard.

There are few dates, which are significant to note. The suit bearing CS No.321 RT of 2017 was filed by the respondents-plaintiffs (Deepak and Parmod) on **30.03.2017**. Defendant No.2-Smt.Gindori made appearance in the said suit on **01.04.2017**. The sale deed in favour of the petitioner, vis-a-vis, purchase of part land is dated **16.05.2017**, which is executed, on the basis of agreement to sell dated **27.02.2017**. The order of status quo was passed by the Court below on **16.05.2017**.

Learned counsel for respondents No.1 and 2 has vehemently submitted that the sale in favour of the petitioner is non est, in the eyes of law and would not convey any interest to the purchaser, as sale deed was executed, during the pendency of the suit, more particularly, when status quo qua alienation was ordered by the Court. It is submitted that a person, who purchases a property, during the pendency of the suit, is allowed to get impleaded in the suit, there will be no end to such impleadment, as the parties will indulge in further transfers of the suit property and the plaintiff as '*dominus litis*' cannot be made to fight against such persons, indefinitely and endlessly.

However, from the facts as spelt out and as observed aforesaid, it is evident that rights asserted by the petitioner flow to him, on the basis of

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the agreement executed prior to the institution of the suit in hand. Even, it is evident that status quo of alienation has been passed on the day, when the sale deed was executed. The proceedings for punishing the defaulting persons for contempt are also pending. The petitioner had specifically taken the plea about there to be collusion between the plaintiffs as well as their mother Smt.Gindori, who had sold the said property. The plea raised by the petitioner that he was bonafide purchaser, has to be decided, before it can be held that no rights flow to him, on the basis of the sale deed in his favour. If the application for impleadment is thrown out, without decision on the aforesaid question, then certainly, the petitioner will come up with separate suit to enforce his alleged right, which means multiplicity of proceedings. In such circumstances, it cannot be said that petitioner is neither necessary or proper party to the suit.

Order 1 Rule 10 CPC enables the Court to add any person as party, at any stage of the proceedings, if the person, whose presence before the Court is necessary, in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision of the Code.

In the given circumstances, if the purchaser does not apply to be impleaded, he may suffer by default, on account of any order passed in the proceedings. But however, if he applies to be impleaded as party and to be heard, then he has to be got so impleaded and heard.

In the case in hand, as already observed aforesaid, it is categoric

claim of the petitioner, about there to be collusion between the plaintiffs and their mother Smt.Gindori, through whom, the petitioner had purchased the suit property, which was got executed, on the day, when the order of status quo was passed. Even though, Smt.Gindori, mother of the respondents-plaintiffs, had made appearance in the Court, much prior to the execution of the sale deed, but however, there was silence, maintained on her part. Considering the same, an element of collusion, as asserted, cannot be ruled out. Till date, even after such disclosure, the respondents-plaintiffs had not sought amendment of the plaint, to challenge the sale deed, in favour of the petitioner.

Considering the same, the rights of the petitioner, as such, are jeopardized and therefore, for effective decision of the case, the petitioner is necessary and proper party.

In the light of the aforesaid observations, the impugned order is hereby set aside and the application under Order 1 Rule 10 CPC filed by the petitioner stands accepted.

Accordingly, the present revision petition stands allowed.

August 28, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No