

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

CR 9226/2018 (O&M)

Date of decision: 02.02.2023

Kewal Krishan

.....Petitioner

Vs.

Sarabjit Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Sumati Jund, Advocate for the petitioner.
Mr. G.S. Punia, Senior Advocate assisted by
Ms. Harveen Kaur, Advocate for respondent no.1.

Nidhi Gupta, J.

Present revision petition has been filed by petitioner/plaintiff against the order dated 25.5.2018 (Annexure P-5) passed by Ld. Additional District Judge, Hoshiarpur, whereby application filed by respondent no.1 for transposing him as appellant no.4 and to file his Memorandum of Appeal has been allowed.

Brief facts of the case are that the petitioner/plaintiff had filed a suit against the present respondents for possession by way of specific performance of the agreement to sell dated 6.12.2007 in respect of land described in the head note of the plaint, and in the alternative suit for recovery of Rs.4 lacs. Vide judgment and decree dated 30.10.2015 Annexure P-1 the said suit was decreed in favour of the petitioner/plaintiff; against which respondents no. 2 to 4 herein preferred an Appeal against the present petitioner and respondent no.1.

During the pendency of this appeal, present respondent no.1/defendant no.2 filed

an application dated 16.2.2017 Annexure P-3 for transposing him as appellant no.4 in the said appeal and to file his Memorandum of appeal.

On notice the petitioner contested the said application by filing reply dated 9.3.2017 Annexure P-4. Vide impugned order dated 25.5.2018 said application Annexure P-3 has been allowed by the Ld. Court below. Hence, the present revision petition.

It is *inter alia* submitted by the Ld. counsel for the petitioner that whenever any party is to be transposed, two conditions have to be fulfilled i.e. (a) the said party should be an interested party and (b) there should be commonness of interest between the parties.

It is next submitted that in view of the allegations of fraud levelled by the newly transposed appellant, issue regarding fraud should have been framed and evidence will be required to be led.

It is also submitted that though respondent no.1 is part owner of the suit land yet, he has no common interest with the other appellants. It is stated that this is evident from the totally different pleas and allegations regarding fraud etc., raised by the said respondent no.1-Sarabjit Singh against his brothers/ respondents 2 to 4 herein. It is submitted that Ld. Court below should have first decided the question of fraud and decided the issue on merit after allowing the parties to lead evidence. However, Ld. Court has failed to frame such issue.

It is very ably and persuasively argued by Id. Counsel for the petitioner that in fact, respondent no.1 should have filed a separate appeal as the grounds of appeal filed by respondents 2 to 4 is altogether different from the claims made by respondent no.1. It is further submitted that in allowing the application of respondent no.1, Ld. Court below has not even considered the question of limitation and has just observed “*the question of limitation can be*

taken into consideration by the Court at the relevant time”. It is submitted that therefore, a valuable right of the petitioner has been taken away.

In response to a specific query put to the Ld. Counsel by this Court, as to what prejudice would be caused to petitioner by allowing such transposition, Ld. counsel submits that the relief claimed in the appeal Annexure P-2 is *‘For setting aside the impugned judgment and decree dated 30.10.2013 by accepting the present appeal by dismissing the suit of the plaintiff/respondent’* whereas in the application filed by respondent no.1 for transposing him as appellant no.4, the very veracity of the agreement to sell dated 6.12.2007 has been doubted as it has been inter alia pleaded by respondent no.1 that the said agreement does not bear his signatures, and not a single penny was paid to him, and that his signatures on *vakalatnama* and written statement before the Trial Court, as also the agreement to sell have been forged and fabricated as all the said signatures did not even tally with each other. It is submitted that it is therefore, clear that this is a dispute between brothers, as a result of which interest of the petitioner will be affected. It is reiterated that in case the rights of respondent no.1 have been prejudiced in any manner he should have filed a separate suit against his brothers or at the very least a separate appeal as issue of fraud cannot be decided in appeal. It is further submitted that petitioner has initially paid a sum of Rs.2 lacs as earnest money and that the balance amount of Rs.2.44 lacs has also been paid by the petitioner pursuant to the judgment and decree dated 30.10.2013.

In support, Ld. counsel relies upon **Mauji Ram and another v Ram Kali and others, Law Finder doc Id # 186545** wherein, it has been held by this Court that application under Order 1 Rule 10 CPC for transposition may be allowed where there was commonness of interest between the parties and

where appellants and applicant was an interested party. It is submitted that from the above said facts it is clearly made out that there is no commonness of interest and therefore, the impugned order, on the face of it, is wrong.

In response, Ld. counsel for respondent no1-Sarabjit Singh submits that prima facie fraud appears to have been committed against the said respondent regarding which it is open to the Ld. First Appellate Court to frame additional issue which can be decided by the said Court. Ld. counsel relies upon para 4 of the impugned order to submit that the Ld. Court below has found that respondent no.1 was never properly served in the civil suit filed by the petitioner and that the purported signatures of the respondent no.1 on the Power of Attorney, written statement and agreement to sell did not tally *inter se* and are apparently different from the signatures of the respondent no.1 on his application under Order 1 Rule 10 CPC.

It is further submitted that at some point petitioner will have to deal with the issues raised by petitioner no.1 and filing of separate proceedings will only lead to multiplicity of litigation and apprehends different orders passed by different Courts may lead to conflicting conclusions, whereas all issues can be decided in the present appeal itself.

In rebuttal, learned counsel for the petitioner reiterates that there is no commonness of interest between the appellants and the dispute is *inter se* brothers and petitioner has no role in that.

Heard Ld. counsel for the parties.

It has been admitted by the petitioner that respondent No. 1 is co-owner of suit property. It is in view of this fact that the petitioner himself had arrayed respondent No. 1 as defendant no.2 in the Civil suit filed by him. In view of the admitted ownership of the respondent no.1 over the suit property, it

stands established that he is a necessary party to the present proceedings, as, his rights as co-owner stand to be effected which cannot be determined or decided in his absence. Thus, in my view, irrespective of whether respondent no.1 files a separate civil suit against his brothers for a determination of the issues raised by him, the present proceedings cannot be decided in the absence of respondent No. 1 as he is admittedly, co-sharer in the suit property. I am in concurrence with the submission made on behalf of respondent No. 1 that filing of separate proceedings will only lead to multiplicity of litigation and different orders passed by different Courts may only lead to conflicting pronouncements. As such, prima facie, I see no error in the impugned order.

Moreover, it has been observed by the learned Lower Appellate Court that the alleged signatures of respondent no.1 borne “*on Power of Attorney and written statement are apparently different from those on the agreement to sell*”. Thus, whether or not there is commonality of interest of respondent no.1 with respondent nos. 2 to 4 shall be determined by the learned lower Appellate Court, and whether or not fraud was played upon respondent No. 1 etc., are all issues that shall be adjudicated upon by the Id. Lower Appellate Court. The Ld. Lower Appellate Court is enjoined upon to adjudicate upon all the issues raised in the case in order to do complete justice between the parties as, in my view, in the facts and circumstances of the case, even the rights of the petitioner cannot be effectively, fully and finally determined without first adjudicating upon the issues raised by the respondent No. 1.

In this regard I draw support from a 3-Judge Bench judgment rendered by the Hon’ble Supreme Court in ‘**Kiran Tandon v Allahabad Development Authority and another, Law Finder Doc id # 71032**’, where in similar circumstances Their Lordships, have held as follows:-

*“4. Shri Sunil Gupta, learned senior counsel for the claimant has at the very outset assailed the order of the High Court whereby the application moved by the State of U.P. for transposing it as appellant in the appeals preferred by ADA was allowed. In the appeals preferred by the ADA against the judgment and award of the Addl. District Judge Smt. Kiran Tandon (widow of the original claimant Ravindra Kumar Tandon) was arrayed as respondent No. 1 and State of U.P. was arrayed as proforma respondent No. 2. The applications for transposition were supported by the affidavit of Tehsilar Sadar, Allahabad wherein it was averred that an objection had been raised on behalf of State of U.P. before the Addl. District Judge that the acquired land was State land and therefore the entire compensation amount should be awarded to State of U.P. The land had been acquired for construction of residential flats by ADA which is a State within the meaning of Article 12 of the Constitution and is therefore competent to raise any or all of the objection on behalf of the State Government. Therefore, in order to avoid any technical objection and in the interest of justice it was expedient that the State of U.P. may be transposed as appellant No. 2 in the appeal. The High Court held that as the ADA and State of U.P. were disputing the title of the claimant to receive the entire amount of compensation and State of U.P. having already been impleaded as proforma respondent in the appeal, the interest of justice required that it should be transposed as appellant in the appeal. Sub-rule (2) of the Order 1 Rule 10 lays down that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. It is well settled that the Court has power under Sub-rule (2) Order 1 Rule 10 Civil Procedure Code to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could be exercised by the High Court in appeal, is necessary, suo motu to do complete justice between the parties. This principle was laid by the Privy Council in **Bhupendra Narayan Sinha v. Rajeshwar Prosad**, AIR 1931 Privy Council 162 and has been consistently followed by all the Courts. In fact the pleas raised by the ADA and State of U.P. were identical and in order to effectuate complete adjudication of the question involved in the*

appeal it was in the interest of justice to transpose State of U.P. as appellant No. 2 in the appeal. We are, therefore, of the opinion that no exception can be taken to the course adopted by the High Court in transposing the State of U.P. as appellant in both the appeals”.

In view of the facts and law as discussed above, I find that no ground is made out to interfere with the impugned order dated 25.5.2018 (Annexure P-5). The present revision petition is accordingly, dismissed.

Application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

02.02.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No