



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CR-6708-2023 (O&M)
Decided on: 27.05.2024

Amaninder Singh

...Petitioner

Versus

Gopal Chand and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Ranjit Saini, Advocate
for the petitioner.

Mr. R. K. Chauhan, Advocate
for the respondents.

RITU TAGORE, J.

1. The petitioner (defendant No.1 before the learned trial Court) has preferred this revision petition against the order dated 29.09.2023 passed by learned Civil Judge (Junior Division), Kharar in a Civil Suit No. 704 of 2020, allowing the application for the amendment of the plaint, moved by respondent No.1 (plaintiff before the learned trial Court).
2. Learned counsel for the petitioner submits that respondent No.1 instituted a suit for possession by way of specific performance of agreement to sell dated 21.04.2018 and mandatory injunction against the petitioner and proforma respondent No.2, Jasdeep Kumar. It is stated that while allowing the application for amendment of the plaint, learned trial Court ignored the



material facts of dismissal of civil miscellaneous appeal for grant of interim injunction preferred by the respondent No.1 wherein learned Appellate Court concluded that respondent No.1 has no *prima facie* case in his favour and further observed that any sale made by the party during the subsistence of the suit is subject to the principle of *lis pendence* as enshrined in Section 52 of The Transfer of Property Act, 1882. It is stated that subsequent vendee is not a necessary party and need not to be impleaded in a suit. In support of his arguments learned counsel referred to a judgment of co-ordinate Bench of this Court in **Chandan Singh and others Vs. Parsa and others, 1996 (1) CivCC 425.**

3. Further assailing the impugned order, it is contended that amendment of plaint after the commencement of trial, is not maintainable. It is further stated that no application for impleadment under Order 1 Rule 10 CPC was filed by the respondent No.1, despite that learned trial Court allowed the proposed defendants to be added in the memo of parties. It is stated that dispute is essentially between the petitioner and respondent No.1, regarding the agreement to sell and exchange deed in question, therefore the proposed defendants are not necessary parties and their presence is not required for the affective decision of the matter, pending before the learned trial Court. On the above submissions, a prayer is made to set aside the impugned order being indefensible in the eyes of law.

4. Contrary to it, learned counsel for the respondent No.1 defended the impugned order submitting that the petitioner after the sale and exchange of land to the proposed respondents has left with no interest in the subject matter of the suit. Learned counsel submits that the petitioner sold land measuring 2.5 marlas out of the suit land to Ramesh Chander son of



Norang Singh and exchange the land measuring 3.5 marla out of the suit land to Chander Kala wife of Ramesh Chand and Ramesh Chand on 01.07.2021 respectively, during the pendency of the suit. These subsequent events necessitated the respondent No.1 to seek the cancellation of both sale deed and exchange deed. In these circumstances, proposed defendants are necessary parties.

5. Learned counsel further contends that the Court under Order 1 Rule 10 (2) CPC is empowered to add or strike out any person as a necessary party, at any stage, where if finds the presence of party(ies) is necessary for complete adjudication of the case before it. In support of his arguments learned counsel referred to judgment of Hon'ble the Supreme Court in **Sudhamayee Pattnaik and others Vs. Bibhu Prasad Sahoo and others, 2023 (1) R.C.R.(Civil) 709**. It is also submitted by learned counsel that observation of the learned Appellate Court in civil miscellaneous appeal are not binding upon the Court while adjudicating the application for amendment of the plaint. Based on these submissions, the learned counsel pleads that revision is meritless and be dismissed.

6. Heard, learned counsel for the parties and gone through the paper book with their valuable assistance.

7. It is a matter of record that respondent No.1 instituted a civil suit for possession by way of specific performance and mandatory injunction against the petitioner and respondent No.2 as proforma respondent. It is not disputed by the petitioner that during the pendency of the suit, he sold the part of the suit land to Ramesh Chander and exchange the part of the suit land with Chander Kala and Ramesh Chander. The aforesaid facts gave additional cause of action to respondent No.1 to raise challenge to the sale



deed as well as exchange deed against the proposed defendants. The learned trial Court while allowing the application observed that the proposed amendment is necessary for the determination of real controversy in the matter which has been necessitated due to the subsequent sale and exchange of the part of the suit land. The learned trial Court also observed that amendment is necessary to avoid multiplicity of proceedings between the parties.

8. Order 1 Rule 10 (2) CPC empowers the Court, either on its own or upon the application of a party, at any stage, strike out or add party(s), whose presence is necessary before the Court, in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Therefore, the contention of the learned counsel for the petitioner that the learned trial Court erred in allowing the proposed respondents to be added in the party without there being any application for their impleadment is not tenable in view of the above provisions. The learned trial Court has specifically observed that proposed amendment and presence of proposed defendants is necessary for complete, effective and judicious determination of the controversy before it.

9. Learned Appellate Authority decided the civil miscellaneous appeal within its limited scope with respect to grant or not to grant the interim relief of injunction, therefore, observations of the learned Appellate Authority made on the decision of civil miscellaneous appeal, have no bearing on the decision of application for amendment of the plaint. Thus, the contention of the counsel for the petitioner that the impugned order of the learned trial Court is unsustainable having not considered the observations of the learned Appellate Court is not tenable.

10. For the reasons recorded above, it is held that the learned trial Court has rightly exercised the jurisdiction while passing the impugned order; therefore, it warrants no intervention.
11. Accordingly, this revision petition is dismissed.
12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

27.05.2024
Rimpal

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