

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.125

Case No. : C. R. No.7641 of 2023

Date of Decision : January 09, 2024

Virender Mehta Petitioner
vs.
Tejinder Mohan and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Chirag Wadhwa, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 25.10.2023 (Annexure P-6), passed by learned Civil Judge (Junior Division), Karnal (hereinafter referred to as – the Trial Court), whereby application under Order 1 Rule 10 CPC was allowed and respondent no.3 has been impleaded as defendant no.3 in the suit for permanent injunction, and also without adjudicating the application under Order 6 Rule 17 CPC for amendment of counter-claim, by virtue of which, the cause of action, if any, would arise against the newly impleaded defendant/respondent no.3.
2. The brief facts of the case, as culled out from the paper-book, are that plaintiff/petitioner Virender Mehta filed suit for permanent injunction against his brother Tejinder Mohan (respondent no.1) as defendant and sister Rajni Kiran (respondent no.2) as proforma defendant, wherein it was submitted that father of both the parties had filed a suit for

permanent injunction against respondent no.1, subsequent to which suit for declaration with permanent injunction was filed by respondent no.1 against his father and others, wherein respondent no.1 had claimed his co-parcenary right over his father's property being a co-parcenar of joint family and also claimed the property, part of which is now the suit property, also to be the ancestral property in the hands of his father. In the suit filed by respondent no.1, he also challenged the decree dated 03.12.1969, passed in Civil Suit No.1346 of 1969, by which his grandfather Sh.Lila Krishan transferred his land measuring 88 kanals 16 marlas in favour of his grandmother Smt.Ishwari Bai. In addition to that, he also challenged the Will dated 26.08.1998 executed by his grandfather Sh.Lila Krishan, through which he had bequeathed his movable and immovable properties in the name of his four sons including father of respondent no.1 Shruti Kant.

3. Both the aforesaid suits were clubbed by the learned Trial Court and were decided vide common judgment dated 21.05.2013, wherein the property in the hands of grandparents of parties was held to be their self-acquired property. Consequently, aforesaid decree dated 03.12.1969 and the Will dated 26.08.1998 were held to be valid in the eyes of law. So, the suit filed by respondent no.1 was dismissed and the suit filed by father of respondent no.1 was decreed by holding that respondent no.1 was not in possession of even an inch of land, which was owned and possessed by his father being his self-acquired property.

4. Aggrieved by the aforesaid judgment dated 21.05.2013, respondent no.1 preferred appeal, which was also dismissed vide judgment dated 29.03.2017. So, the judgment and decree dated 21.05.2013 of learned

Trial Court was upheld and affirmed by the learned Appellate Court.

5. Coming to the case in hand, the present suit has been filed by the plaintiff/petitioner qua the property, which was self-acquired property in the hands of father of the parties, which he has been cultivating during his lifetime with the assistance of present petitioner. Earlier, father of parties namely Sh.Shruti Kant and his three brothers were joint owners in the lands situated in Village Rindal and Village Landora. Since the said lands were mutated in unequal shares among all the brothers, a constant dispute was there. However, on 02.10.2007, with the intervention of respectables, the dispute was resolved and all the brothers were allocated separate chunks of land. Again in the month of January 2009, dispute arose and settlement took place on the occasion of Baisakhi festival, as a result of which, the parties were put in possession of their respective lands and since then, they have been continuing to be owners of their respective lands. In this regard, a Civil Suit No.96 of 2010 was also filed, which was decided on 17.01.2011.

6. Shri Shruti Kant, father of the plaintiff, along with the plaintiff, was in actual physical cultivating possession of his self acquired land along with some other lands. He got executed a Will, which was registered on 13.12.2012. As per the conditions of the said Will, Shri Shruti Kant dealt away all his property detailed in the Will. Later, vide transfer deed dated 01.05.2017, land of some specific *baras* was transferred in the name of plaintiff/petitioner by Shri Shruti Kant, mutation whereof was also got entered and sanctioned in the records. So, the plaintiff/petitioner got constructed his house over the said land of *baras* and is staying there peacefully for the last so many years. Apart from the aforesaid transfer deed

dated 01.05.2017, transfer deeds dated 24.04.2019 and 14.08.2019 were also got executed by father of the petitioner in his favour.

7. Learned counsel for the petitioner contended that respondent no.1 was not having cordial relations with his father and since he was having an evil eye on his father's property, he was disowned by him about 26-27 years ago. Various criminal cases were also pending against respondent no.1. It has also been pointed out that even in a complaint dated 05.04.2007, respondent no.1 admitted his mistakes and gave a "*maafinama*" before the Court for being cruel to his father. It was also submitted that it was the plaintiff/petitioner, who used to take care of his parents till their last breath.

8. It is further contention of learned counsel for the petitioner that immediately before the death of his father, petitioner was in cultivating possession of the entire estate of his father and was taking care of the same. So, even now, he is in cultivating possession as owner of the agricultural land and *baras* which have been transferred to him by his father, as discussed above. Learned counsel has further submitted that respondent no.1 has no concern with the suit land but is trying to dispossess the plaintiff/petitioner from the suit land by using various tactics, his links with anti-social elements and political connections. So, the suit for permanent injunction was filed but defendants/respondents no.1 and 2 filed counter-claim and also filed an application under Order 1 Rule 10 CPC for impleading Asha Rani (respondent no.3) as defendant no.3 to the counter-claim and an application under Order 6 Rule 17 CPC for amendment of counter-claim. The said application has been allowed vide impugned order dated 25.10.2023, which deserves to be set aside as the same is not

maintainable. He further contends that Asha Rani is not necessary party and cannot be added in the present suit in the present form and manner.

9. I have heard learned counsel for the petitioner and perused the case file.

10. The main point involved in the present lis relates to application for impleadment of subsequent purchaser Asha Rani, which has been allowed by learned Trial court. Perusal of the record shows that during pendency of the suit, the plaintiff/petitioner has sold the suit property on 17.12.2021 to Asha Rani, without even taking permission of the Court. So, the learned Trial Court, while observing that since both the parties are claiming their right over the suit property and the property has already been alienated, allowed the application for impleading Asha Rani as party to the suit. The relevant portion of the impugned order dated 25.10.2023 reads as under :-

“File perused. Plaintiff has filed present suit for permanent injunction and thereafter defendant put his appearance and filed written statement along-with counter claim and sought relief of permanent injunction to restrain the plaintiff to create any charge over suit property and also sought injunction to alienate the suit property. It is not in dispute that during the pendency of the present suit the plaintiff sold the suit property vide Sale Deed dated 17.12.2021 in favour of Asha Rani. When suit property has been alienated during the pendency of present suit and both parties are claiming their right over suit property which is now owned by Asha Rani and therefore it can say that

Asha Rani is necessary party for the dismissal of present suit. Hence, the application in hand is allowed.”

11. The plaintiff/petitioner has alienated the property during pendency of the case and subsequent purchaser is now in possession of that property. Since the suit is only for permanent injunction and defendant s have also filed counter-claim, so, subsequent purchaser is a necessary party to the suit.

12. Accordingly, I do not find that the learned Trial Court has committed any error in allowing the application for impleading subsequent purchaser as defendant no.3 to the suit. So, there is no illegality or perversity in the impugned order dated 25.10.2023 so as to warrant interference at the hands of this Court. The present revision petition is without any merit and the same is, therefore, dismissed.

13. Pending applications, if any, shall stand disposed of along with this judgment.

January 09, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.