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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-1691-2019****Date of Decision: 25.03.2025**

Hari Singh (Deceased) Through LRs

....Petitioner

Versus

Pahlu and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Amit Jain, Advocate
for the petitioner.Mr. Vinay Kumar Pandey, Advocate
for respondent No.1.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 18.02.2019 (Annexure P-8) passed by the Court of learned Civil Judge (Junior Division), Ferozepur Jhirka vide which the application filed by respondent No.1-plaintiff (Pahlu) under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for treating the suit to have been filed against petitioner-defendant No.2 (Hari Singh) when the suit was initially filed against defendant No.1 Chahat was allowed.

2. The facts, as emanating from the revision petition, are that an agreement to sell was executed on 31.12.2003 by defendant No.1 (Chahat) in favour of respondent No.1-plaintiff (Pahlu). Since the agreement was not honoured, a suit for specific performance was filed on 14.03.2005. The same was decreed *ex parte* on 26.11.2008 against defendant No.1 (Chahat). An execution petition was also filed on 26.05.2010. However, subsequently an application under Order 9 Rule 13 CPC was filed by defendant No.1 (Chahat) on 26.03.2014. The *ex parte* judgment and decree was set aside on 15.03.2017. Thereafter, written statement was filed by defendant No.1 (Chahat) on 18.01.2018. In the said written statement, it was disclosed that the

land in dispute had already been alienated in favour of the present petitioner vide registered sale deed dated 26.04.2004. Under the circumstances, an application under Order 1 Rule 10 CPC (Annexure P-1) was moved to implead the present petitioner as defendant No.2. Though the application was opposed by way of reply, the same was allowed vide order dated 13.03.2018 (Annexure P-3). Subsequently, written statement was also filed by the present petitioner (Annexure P-5). Another application under Section 151 CPC (Annexure P-6) was moved by respondent No.1-plaintiff (Pahlu) that the suit against defendant No.2 be treated to have been filed on the same date as was filed against defendant No.1. It was averred in the application that while allowing the application under Order 1 Rule 10 CPC, no order was passed in terms of the provisions of Section 21 of the Limitation Act, 1963. Reliance was placed upon the proviso to the said provision and accordingly, it was prayed that the application be allowed. The said application was opposed by way of reply (Annexure P-7). However, by way of the impugned order, the said application was allowed, leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner has strenuously urged that the impugned order is not sustainable. He submits that the sale in favour of the petitioner had been effected prior to the institution of the suit and, therefore, the provisions would not be applicable. He submits that even otherwise, the tone and tenor of the application as also the impugned order is such as if the relief against defendant No.1 was being given up and only defendant No.2 was being retained. He submits that in any case, the order is not sustainable and, therefore, deserves to be set aside. In support of his contentions, learned counsel has placed reliance upon the judgments passed by this Court in the cases of '*Om Parkash Vs. Darshan Singh*', 2003 (4) RCR (Civil) 845, '*Smt. Bhagwan Kaur and Others Vs. Land Acquisition Collector, Ludhiana and Others*', 2012 (13) RCR (Civil) 180, '*New Bank of India Vs.*

***Bhupinder Singh*, 1991 (1) RRR 385 and ‘S. Hira Singh Vs. State of Punjab’, 1985 RRR 369.**

5. *Per contra*, learned counsel for the respondents submits that there is no illegality in the order passed by the learned trial Court. He submits that in fact, respondent No.1-plaintiff (Pahlu) has been duped by defendant No.1 (Chahat) as after executing an agreement to sell in his favour on 31.12.2003, he alienated the land in favour of the present petitioner/defendant No.2 vide registered sale deed dated 26.04.2004. Not knowing about the said alienation, the plaintiff instituted the suit for specific performance on 14.03.2005. He submits that under the circumstances, after impleading the present plaintiff as defendant No.2, the proviso to Section 21 of the Limitation Act, 1963 would come into play as against defendant No.2 and the suit would be deemed to have been instituted on the same day as was instituted against defendant No.1 i.e. 14.03.2005. In support of his contentions, learned counsel placed reliance upon the judgments passed by the Supreme Court of India in the case of ***‘Prithi Pal Singh and Another Vs. Amrik Singh and Others’*, 2014 (1) RCR (Civil) 327** as also the judgments passed by this Court in the cases of ***‘Nirmala Devi and Others Vs. Surjit Singh and Others’*, 2010 (66) RCR (Civil) 737**, ***‘Gurcharan Singh Vs. Firm Qimat Rai Janak Raj’*, 1985 (2) PLR 583** and ***‘Amrik Singh etc. Vs. Gian Singh etc.’*, 2018 (3) PLR 437.**

6. I have considered the submissions made by learned counsel for the parties.

7. Admittedly, the agreement to sell was executed by defendant No.1 (Chahat) in favour of respondent No.1-plaintiff (Pahlu) on 31.12.2003. The suit for specific performance was filed on 14.03.2005. Initially, the suit was decreed *ex parte* on 26.11.2008 but on an application under Order 9 Rule 13 CPC having been moved, the *ex parte* judgment and decree was set aside on 15.03.2017. In the written statement filed on 18.01.2018, it was disclosed for the first time that the land in dispute had been alienated in favour of the petitioner vide registered sale deed dated

26.04.2004. It, therefore, means that the land in dispute had been alienated after the execution of the agreement to sell but before the filing of the suit for specific performance. Once respondent No.1-plaintiff acquired the knowledge about the same, he immediately moved an application under Order 1 Rule 10 CPC to implead the present petitioner as defendant No.2. This application was allowed vide order dated 13.03.2018. Subsequently, another application was moved which has now been allowed. In the considered opinion of this Court, there is no illegality in the impugned order.

8. Section 21 of the Limitation Act, 1963 states as under:

“21. Effect of substituting or adding new plaintiff or defendant. –

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was not made party;

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

The proviso to Section 21 (1) of the Limitation Act, 1963 clearly lays down that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant would be deemed to have been instituted on any earlier date.

9. In the present case, respondent No.1-plaintiff had no knowledge that the suit land had been alienated and he came to know about the same only when the written statement was filed after which he immediately moved the application under Order 1 Rule 10 CPC. The trial Court was, therefore, convinced that there was no fault of respondent No.1-plaintiff in impleading the present petitioner as a defendant

at a subsequent stage. It, therefore, permitted the treating of the suit to have been filed against the present petitioner on the date when it was filed against defendant No.1 (Chahat). I do not find any illegality in the said view taken by the learned trial Court. Reliance was rightly placed by the trial Court upon the judgment of a Coordinate Bench of this Court on the case of '*Nirmla Devi Vs. Surjit Singh*', 2010 (66) RCR (Civil) 737:

“The applicant/plaintiff has immediately filed an application under order 1, rule 10 CPC for impleading Hari Singh, when the fact of execution and registration of the sale deed in favour of Hari Singh on 26th of April 2004 was disclosed by the LRs of defendant No. 1 in their written statement. The said application was allowed by the order dated 13th of March 2018 by my predecessor court. Subsequently notice was issued to Hari Singh and because Hari Singh had died, his legal representatives were brought on record, who are contesting the present application, as well as the suit. No-fault/lapse can be imposed on the part of the applicant/plaintiff in not impleading the defendant No. 2 as a party to the suit initially. The plaintiff wasted no time in impleading him after coming to know about the execution and registration of the sale deed in favour of Hari Singh and immediately moved the application for his impleadment. The case of the plaintiff is squarely covered within the four corners of judgment titled as "*Nirmla Devi v. Surjit Singh*" (P&H) : Law Finder Doc Id # 606600, 2010 (5) law Herald 3622. The relevant part of para No. 5 of the judgement is reproduced as under:

‘There cannot be any dispute with the proposition that there has to be an order by the Court under proviso to Section 21 of the Limitation Act that the suit shall be deemed to have been instituted on an earlier date against the added party. Section 21 of the Limitation Act provides that suit against the added defendant shall be deemed to have been instituted when he was so made a party. However, proviso to Section 21 of the Limitation Act lays down that where the Court is satisfied that omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may be directed that the suit, as regards such plaintiff or defendant, shall be deemed to have been instituted on an earlier date. In the instant case, learned counsel for the petitioners concedes that for the first time, Will in favour of the petitioners executed by Mansa Ram was disclosed to the plaintiff in January 2004 only. The plaintiff immediately moved application under Order 1, Rule 10 CPC for impleading the petitioners as party to the suit.

Prior to it, the plaintiff had no knowledge of the Will existing in favour of the petitioners and therefore, the plaintiff had no reason to implead the petitioners as party to the suit. It is thus manifest that there was no lapse or fault on the part of the plaintiff in not impleading the petitioners as party to the suit initially. The plaintiff lost no time in impleading them after coming to know of the Will and immediately moved application for their impleadment. Consequently, requirements of proviso to Section 21 of the Limitation Act are fully satisfied and the trial court has passed the impugned order giving benefit of the said proviso to the plaintiff. There is, therefore, no infirmity in the impugned order of the trial court. Judgments C. R. No. 1609 of 2010 4 cited by learned counsel for the petitioners, referred to herein above, simply stipulate that there has to be an order by the trial court under proviso to Section 21 of the Limitation Act. In the instant case, the said requirement has been satisfied by the trial court by passing the impugned order.'

10. I have gone through the judgments relied upon by learned counsel for the petitioner. In the case of '**Om Parkash Vs. Darshan Singh**' (supra), a Co-ordinate Bench held that any person arrayed as a party defendant subsequently would be deemed to have joined the proceedings from the date of service of summons and as per Section 21 of the Limitation Act, 1963, the suit would be deemed to have been instituted against the arrayed defendants from the date of the order. There is no dispute in the said ratio. However, in that case, the proviso to Section 21 (1) of the Limitation Act, 1963 was not considered and even the facts were different. Under the circumstances, the petitioner would not be able to derive any benefit from the said judgment. In the case of '**New Bank of India Vs. Bhupinder Singh**' (supra), a Co-ordinate Bench held that the provisions of Section 21 of the Limitation Act, 1963 were to be construed strictly and that to exercise the discretion, the Court must be satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith if it was to be ordered that the suit as regards such person would be deemed to have been instituted on an earlier date.

11. In the present case, this Court has already upheld the decision taken by the trial Court while holding that this Court as also the trial Court were convinced

about the *bona fides* of defendant No.1 (Chahat) and, therefore, the application has rightly been allowed. The other two judgments relied upon by learned counsel for the petitioner in the case of *Smt. Bhagwan Kaur and Others Vs. Land Acquisition Collector, Ludhiana and Others* (supra) and '*S. Hira Singh Vs. State of Punjab*' (supra) would also not come to the aid of the petitioner. It cannot be said that merely because the sale deed had been executed in favour of the petitioner even prior to the filing of the suit, it would be deemed notice to the defendants since it was a registered document. It has to be kept in mind that after the execution of the sale deed, when the suit was filed, defendant No.1 (Chahat) did not contest the same and was proceeded against *ex parte*. *Ex parte* decree was also passed. Subsequently, an application under Order 9 Rule 13 CPC was filed which was allowed and, thereafter, written statement was filed in which the factum of the sale deed was disclosed. It is, therefore, clear that there was a deliberate attempt to conceal the said fact from respondent No.1-plaintiff. Under the circumstances, this technical issue cannot be brought in at this stage.

12. The cumulative effect of the aforesaid discussion leads this Court to the conclusion that there is no illegality or infirmity in the impugned order, warranting interference in Revisional jurisdiction.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

25.03.2025
Prince Chawla

Whether speaking/reasoned :
Whether reportable :

Yes/No.
Yes/No.