

(2012) 11 P&H CK 0144

High Court Of Punjab And Haryana At Chandigarh

Case No: C. R. No. 7714 of 2010 (O and M)

Sube Singh and others

APPELLANT

Vs

Pushpa Rani and another

RESPONDENT

Date of Decision: Nov. 6, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151

Citation: (2013) 169 PLR 237

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Vibhav Jain, Mr. Arun Jain, for Mr. Ajay Kaushik and M/s Ameri Estate Pvt. Ltd, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 2671-C-II of 2012

1. This is application by M/s Ameri Estate Pvt. Ltd. (applicant) for impleading it as party to the instant revision petition. Heard.

2. The applicant claims to have purchased the suit property from respondents/original defendants vide sale deed dated 30.08.2006 after the suit filed by the plaintiffs/petitioners stood dismissed as withdrawn vide order dated 17.09.2005, pursuant to compromise between the parties to the suit. No proceeding was pending between the parties to the suit at the time of purchase of the suit property by the applicant. Subsequently, plaintiffs filed application on 27.10.2007 for restoration of the suit, which has been dismissed by the trial court, vide order dated 21.09.2010, which is under challenge in this revision petition filed by the petitioners u/s 115 of the CPC (in short - CPC).

3. In the aforesaid circumstances, the applicant being purchaser of the suit property at the time when no proceeding was pending between the parties, but proceedings have been initiated subsequently, is certainly necessary party to the litigation. Accordingly, without reflecting anything on merits, the instant application is allowed. The applicant, as described in paragraph 6 of the application, is ordered to be impleaded as respondent no. 3 to the instant revision petition.

4. Necessary correction in the "Memo of Parties" be made by the Office.

Main Case :

5. Petitioners/plaintiffs, by way of instant revision petition u/s 115 of the CPC (in short - CPC), have assailed order dated 21.09.2010 passed by the trial court thereby dismissing application Annexure P-7 filed by the plaintiffs u/s 151 CPC for restoration of the suit.

6. Petitioners filed suit against respondents challenging sale deed dated 22.01.2003, whereby suit property was sold by plaintiffs to defendant no. 1 alleging that the sale consideration received by the plaintiffs was deposited in bank account, but the said bank account has been seized by Central Bureau of Investigation (CBI) in view of the proceedings against respondents, and therefore, plaintiffs could not avail of the sale consideration. Respondent no. 2 is husband of respondent no. 1 and is brother of Mayawati - Ex-Chief Minister of Uttar Pradesh.

7. Application dated 17.09.2005 (Annexure P-4) was moved by the plaintiffs in the trial court for withdrawing the suit alleging that the parties have effected compromise and misunderstandings have been removed. Statement Annexure P-5 of the parties in this regard was recorded by the trial court, and thereupon, vide order dated 17.09.2005 (Annexure P-6), trial court dismissed the suit as withdrawn, in view of compromise between the parties.

8. The plaintiffs, in their restoration application Annexure P-7, alleged that the compromise had been effected on assurance of respondents that they would pay Rs. 80 lacs to the petitioners, but the respondents failed to pay the same and thus, suit was got dismissed as withdrawn by fraud.

9. Respondents controverted the averments of the petitioners made in the restoration application. Allegations regarding payment of Rs. 80 lacs and fraud were denied. The suit was rightly dismissed as withdrawn in view of compromise between the parties.

10. Learned trial court, vide impugned order dated 21.09.2010, has dismissed the application Annexure P-7, for restoration of the suit, moved by the plaintiffs, who have, therefore, filed this revision petition to challenge the said order.

11. I have heard learned counsel for the parties and perused the case file.

12. Counsel for the petitioners reiterated the averments made in the restoration application. However, counsel for respondent no. 3 contended that the suit had been dismissed as withdrawn vide order dated 17.09.2005 and restoration application was filed on 27.10.2007 i.e. after more than two years, and therefore, the same has rightly been dismissed. It was also pointed out that there is no written compromise depicting that respondents had to pay Rs. 80 lacs to the petitioners.

13. I have carefully considered the rival contentions.

14. The plaintiffs not only moved the application Annexure P-4 for withdrawing the suit, but also made statement Annexure P-5 for withdrawing the suit, in view of compromise effected between the parties. Withdrawal of the suit was unconditional. There is not even a whisper either in application Annexure P-4 or in statement Annexure P-5 that any amount was agreed to be paid under the compromise and was to be paid subsequently. Moreover, if any amount had to be paid by the respondents under the compromise, the petitioners would not have waited for two years to file the restoration application. There would also have been some written document regarding liability of the respondents to pay the huge amount of Rs. 80 lacs to the petitioners in terms of compromise. However, there is no such document. There is only vague and general assertion that the amount of Rs. 80 lacs was to be paid. It is not even mentioned as to within how much period the said amount was to be paid. There is also assertion that respondents had assured that bank account of the petitioners would become operational within a month. If it had been so, there would have been no necessity of paying the additional amount of Rs. 80 lacs because the petitioners would have been able to avail of the sale consideration lying in their bank account, which was allegedly to become operational within one month. However, there is no recital about the said assertion also either in application Annexure P-4 or in statement Annexure P-5.

15. Counsel for the petitioners contended that in similar circumstances in another suit, the suit was restored and was even decreed subsequently. However, the said decree has not attained finality. Consequently, petitioners cannot take any benefit out of this contention.

16. It is also significant to notice that the original sale deed dated 22.01.2003 was for consideration of Rs. 7 lacs only, as submitted by counsel for the petitioners. In view thereof, the respondents could not have possibly agreed to pay huge amount of Rs. 80 lacs to the petitioners. In the aforesaid circumstances, the restoration application has been rightly dismissed by the trial court because there was no ground to restore the suit, which was withdrawn unconditionally in view of compromise between the parties to the suit. There is no infirmity much less perversity, irregularity, illegality or jurisdictional error in the impugned order of the trial court so as to warrant interference by this Court in exercise of revisional jurisdiction u/s 115 CPC. On the contrary, the restoration application as well as the instant revision petition filed by the petitioners are not only meritless, but are completely frivolous and result of

dishonesty and greed. The revision petition is completely meritless and is accordingly dismissed.