

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1719 of 2015
Date of Decision: 11.3.2015.**

Ram Kalan and others

.....Petitioners

Versus

Surender Yadav and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sudhanshu Makkar, Advocate
for the petitioners.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 5.1.2015 (Annexure P-8) whereby their application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Respondent No. 1 has filed suit for specific performance of agreement to sell dated 4.2.2013 against respondent No. 2. During the pendency of the suit, petitioners moved an application under Order 1 Rule 10 CPC that they be impleaded as a party to the suit.

Case of the petitioners, as per their application Annexure P-6, was that the house in question was owned by Mohar Singh but as per the municipal record, it was recorded in the name of Sheo Narain. After the death of Sheo Narain, the house was recorded in the names of Ram Kalan, Balwan, Shakuntla and Om

Parkash in equal shares. Ram Kalan, Balwan and Shakuntla had suffered a decree qua their share in the house in question in favour of Om Parkash. The decree passed in favour of Om Parkash was challenged by Kamla Devi and in the said suit, a compromise was effected between the parties and it was settled that the petitioners and defendant Om Parkash would be owners in possession in equal shares of the house in question. Applicants were owners in possession of $\frac{3}{4}$ share of the house in dispute whereas Om Parkash had only $\frac{1}{4}$ share in the house in dispute. Hence, Om Parkash could not execute the agreement to sell in question in favour of the plaintiff qua half share out of the suit land.

In the present case, admittedly, Om Parkash had filed suit for declaration against Ram Kalan, Balwan and Shakuntla that he was exclusive owner in possession of the house in dispute bearing Municipal Unit No. A-267. The said suit was decreed on 7.9.2009 (Annexure P-1). The said decree was challenged by Kamla Devi by filing a suit for declaration. A perusal of Annexure P-3 reveals that petitioners were also arrayed as defendants in the said suit. Annexure P-2 is the compromise placed on record in the suit filed by Kamla Devi. The said compromise is signed by Om Parkash and Kamla Devi. Admittedly, the suit filed by Kamla Devi was dismissed as withdrawn vide order Annexure P-3. A perusal of Annexure P-3 reveals that so far as the petitioners are concerned, they were *ex parte* in the suit filed by Kamla Devi. Since the petitioners were *ex parte* in the suit filed by Kamla Devi, the plea taken by them that they had effected a compromise with Kamla Devi, is not believable. Moreover, the compromise Annexure P-2, is not signed by the present petitioners. In the suit filed by Kamla

Devi, decree dated 7.9.2009 passed in favour of Om Parkash, was not set aside as the suit filed by Kamla Devi, was merely got dismissed as withdrawn.

In these circumstances, the learned Trial Court rightly came to the conclusion that the application had been filed by the petitioners in collusion with defendant Om Parkash to defeat the rights of the plaintiff.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 11, 2015
Gurpreet