

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.213 of 2015 (O&M)

Date of decision: 04.11.2015

Ranjit Singh

.....Petitioner

Versus

Ashok Kumar Jain and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anuj Raura, Advocate,
for the petitioner.

Mr. Nitin Jain, Advocate,
for respondent No.1.

None for respondent No.2.

Ritu Bahri, J.

Challenge in this petition is to the order dated 16.12.2014 (Annexure P-2) passed by the Civil Judge (Senior Division), Hisar, whereby application dated 05.12.2014 (Annexure P1) filed by Ranjit Singh-petitioner under Order 1 Rule 10 of the Code of Civil Procedure (for short 'CPC') for impleading him as party defendant, has been dismissed.

The property in dispute was owned by one Swaran Singh, who had four daughters and four sons. Defendant Nos. 1 and 2-Charanjit Singh and Subeg Singh had entered into an agreement dated 06.03.2006 with plaintiff-respondent No.1 in respect of the shop in dispute by claiming their right over it on the basis of a Will dated 12.07.2004. However, their probate petition qua the said Will was dismissed on 01.05.2010. The petitioner is one of the sons of Swaran Singh, who had earlier filed an application under

Order 1 Rule 10 CPC for impleading him as party on the ground that he was in occupation of the suit property as a lessee. The said application was allowed, but the revision filed by the vendee i.e. Civil Revision No.7856 of 2013 was allowed by this Court vide order dated 04.11.2014 holding that if he is a tenant, he would remain tenant until and unless he is dispossessed in accordance with law. However, at that time, while parting with the order, it was observed by this Court that Ranjit Singh-petitioner has his individual right, as the alleged co-owner, to pursue his remedies to be impleaded as a party to the suit. Ranjit Singh filed another application under Order 1 Rule 10 CPC to be impleaded as a party on the ground that he is also co-owner of the property in dispute as his father Swaran Singh died intestate and after his death, the suit property devolved upon him and defendant Nos.1 and 2, who had agreed to sell the suit property to the plaintiff by virtue of agreement to sell dated 06.03.2006 without having right over the entire suit property except to the extent of their shares. The said application has been dismissed vide impugned order dated 16.12.2014 on the ground that Ranjit Singh has been appearing as GPA of defendant Nos.1 and 2 and the present application is only a devise to prolong the litigation.

It is not in dispute between the parties is that defendant Nos. 1 and 2 had entered into an agreement to sell with plaintiff-respondent No.1 qua the shop in dispute, by virtue of a Will dated 12.07.2004, which was executed in their favour by Swaran Singh. A Probate Petition No.6 of 2006 was filed by defendant Nos. 1 and 2, which was contested by petitioner-Ranjit Singh and his sisters namely Gurnam Kaur and Sharanjit Kaur. Ultimately, the said probate petition was dismissed vide judgment dated 01.05.2010 (Annexure P-4).

of the probate petition, the petitioner had equal right in the property, which was sold by defendant Nos. 1 and 2 in favour of plaintiff-respondent No.1. Vide order dated 04.11.2014 passed in **Ashok Kumar Jain Vs. Charanjeet Singh and others**, CR No.7856 of 2013, a Coordinate Bench of this Court had allowed the petitioner and set aside the order impleading the present petitioner as party to the suit, solely on the ground that application had been made by him only as a partner of the firm, M/s Hero Water Meters, 289, Automobile Market, Barwala Road, Hisra, which was lessee/tenant in said property by way of a registered lease deed dated 10.07.1981. However, liberty was granted to Ranjit Singh-petitioner to pursue his remedy in his individual right.

Learned counsel for the petitioner referred to the judgments passed in **Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & others**, 2010 (4) RCR (Civil) 551, **Sumtibai & others Vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & others**, 2007 (4) RCR (Civil) 524, **Amrik Singh Vs. Jagjit Singh Sayal and others**, 2009 (3) RCR (Civil) 553 and **Smt. Sarita Devi Jain Vs. Ram Mehar**, 2009 (1) PLR 170, to contend that after the death of Swaran Singh and dismissal of probate petition, a decree for specific performance could not be passed beyond the share of defendant Nos. 1 and 3, as the petitioner was also a co-sharer in the suit property and impleadment was necessary for a fair decision of the trial.

On the other hand, learned counsel for respondent No.1-plaintiff has argued that in a suit for specific performance under Section 19 of Specific Relief Act, 1963, a co-owner claiming adverse to the claim of the vendor was not a necessary party. He has referred to the judgments passed in

Thakkar Vs. M/s Kiran Construction Co. & others, 2008 (3) RCR (Civil) 57, Om Parkash and another Vs. Rajni Gupta and another, 2008 (1) RCR (Civil) 400 and Full Bench judgment of Madhya Pradesh High Court in PanneKhushali and another Vs. Jeewanlal MathooKhatik and another, 1976 AIR (M.P.) 148, to contend that in a suit for specific performance, under Section 19 of the Act, a co-owner cannot be impleaded as a party, if he is not a party to the contract.

Reference, at this stage, can be made to a decision given by the Hon'ble Supreme Court in Kasturi's case (supra). In that case, a suit for specific performance was filed and subsequently, an application under Order 1 Rule 10 CPC was made for impleadment of defendants. The plea taken was that they were in possession of the property and had an independent title over the same and the sale deed could not be executed in view of their possession over the property. The trial Court had allowed the application and this order was upheld by the High Court. The Hon'ble Supreme Court set aside the order in SLP and held that addition of new defendants would enlarge the scope of the suit for specific performance of the contract. Newly added defendants would base their claim on independent title and possession of the contracted property. This enlargement of the suit was not permissible in law. The respondents were party to the contract, which was subject matter of dispute in a suit for specific performance and in case, a decree was passed in favour of the plaintiff, they could take appropriate remedies in execution proceedings. They were at liberty to obstruct the execution in order to protect their possession by taking recourse to the relevant procedure of the CPC. Further, they could file independent suit for declaration of their title and possession against the vendor and vendee.

Thakkar's case (supra), has held that in the suit for specific performance of contract, a person who was not party to the contract, would not be impleaded as defendant simply on the ground that he had acquired subsequent interest as co-sharer by virtue of a decree obtained from the Court. In this case, the Hon'ble Supreme Court has further observed as under:-

“23. In our view, the decision of this Court in Durga Prasad's case (supra), cannot be brought to the aid of the case made out by respondent No.1. Furthermore, the Division Bench of the High Court also appears to have committed an error in observing that the decision in Anil Kumar Singh's case (supra) was not applicable to the facts of this case, despite the fact that on a consideration of the provisions of Order 1 Rule 10 and Order 22 Rule 10 of the Code, this Court held that since the plaintiff in the said matter was merely seeking the specific performance of an agreement of sale, any attempt to implead a third party to the contract in the suit would be hit by the provisions of Section 15 (a) of the Specific Relief Act, 1963. In fact, in Anil Kumar Singh's case (supra) in a suit for specific performance, the respondent, who was not a party to the contract but wanted to be impleaded as a defendant on the ground that he had acquired subsequent interest as a co-owner by virtue of a decree obtained from the court, was held not entitled to be joined as defendant either under Order 1 Rule 3 or under Order 1 Rule 10 (ii) of the Code having regard to the provisions of Section 15 and 6 of the Specific Relief Act, 1963.”

A Full Bench of Madhya Pradesh High Court in Panne Khushali's case (supra), had exhaustibly examined the provisions of Order 1 Rule 10 (2) CPC with reference to Section 19 of Specific Relief Act, 1963 and observed as under:-

“16. The question referred to us is:

“Whether in a suit for specific performance of a contract for sale, a third person intervener, who contends that the suit property is joint property of the applicant and he is also the co-owner of that property, would be made a party (defendant).”

Our answer is:

Strangers to the contract making a claim adverse to the title of the defendant (vendor) contending that they are the co-owners of the contracted property are

neither necessary nor proper party and are, therefore, not entitled to be joined as parties to the suit.”

This judgment of the Madhya Pradesh High Court has been followed by this Court in **Om Parkash's** case (supra).

However, in the facts of the present case, after dismissal of probate petition on 01.05.2010, right of Ranjit Singh-petitioner in the property owned by Swaran Singh is no longer in dispute. If he is made party to the suit, it will not enlarge the scope of the suit as there is no dispute with regard to his share in the property left by Swaran Singh after dismissal of probate petition. Since after being impleaded as party on an earlier application, he has filed his written statement and has led evidence, it would not amount to enlarging the scope of dispute. Moreover, as per the judgments passed by this Court in **Amrik Singh** and **Smt. Sarita Devi Jain's** case (supra), it has been held that in a suit for specific performance, the vendor can only sell to the extent of his share in favour of vendee. He cannot sell the property/share of other co-sharers. With the dismissal of probate petition, the dispute between defendant Nos. 1 and 2 and the present petition has come to rest and in order to avoid multiplicity of litigation, the present petitioner should have been impleaded as party to the suit. Reference, at this stage, can be made to the verdict given by the Hon'ble Supreme Court in **Mumbai International Airport's** case (supra), wherein it has been observed as under:-

“13. If the principles relating to impleadment, are kept in view, then the purported divergence in the two decisions will be found to be nonexistent. The observations in Kasturi and Sumtibai are with reference to the facts and circumstances of the respective case. In Kasturi, this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In Sumtibai, this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai did

not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.”

In view of the above discussion and the law laid down by the Hon'ble Supreme Court and this Court in **Mumbai International Airport Pvt. Ltd., Amrik Singh** and **Smt. Sarita Devi Jian's** case (supra), this Court deems it fit that the petitioner is a necessary party to the suit and the application filed by him under Order 1 Rule 10 CPC should have been allowed.

Resultantly, the impugned order is set aside; application (Annexure P-1) under Order 1 Rule 10 CPC is allowed and the petitioner is impleaded as defendant No.3 in the suit.

Allowed accordingly.

04.11.2015
ajp

(RITU BAHRI)
JUDGE