

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CR No. 2914 of 2011**  
**Date of Decision : 22.01.2015**

Roop Singh

....Petitioner

Versus

Santokh Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. S.K. Virk, Advocate  
for the petitioner.

Mr. Vijay Lath, Advocate  
for respondents no. 2 and 3.

Mr. Puneet Sharma, Advocate  
for respondents no. 4 to 10.

**R.P. Nagrath, J.**

Petitioner-plaintiff has invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 23.02.2011 (Annexure P-3) passed by the trial Court vide which the application of defendant no. 4-respondent no. 10, for deleting his name from array of the defendants was allowed.

2. The petitioner instituted a suit for possession by way of specific performance of agreement to sell dated 23.01.2009, executed by defendant no. 1 in respect of 10 kanals 01 marla of the land, and to set aside various sale deeds in favour of rest of

the defendants. However, defendant no. 4-respondent no. 10 was impleaded as a party as one of the sale deed was executed in favour of defendants no. 5 and 6 and that sale deed was signed by defendant no. 4-respondent no. 10 on behalf of the vendees. Defendant no. 5-respondent no. 4 is the wife of respondent no. 10. The defendants are stated to have played fraud upon the plaintiff as huge amount was paid as part of the sale consideration by the plaintiff. The suit was instituted on 17.03.2010.

3. Respondent no. 10 filed application dated 24.09.2010 (Annexure P-2), for deleting his name from the array of defendants on the ground that he is not a necessary party and has been impleaded simply to harass him. He is 73 years old person and a senior citizen. Learned trial Court observed in the impugned order that the sale deed dated 21.08.2009 purports to be executed by respondent-defendant no. 1 in favour of defendants no. 5 and 6 and respondent no. 10 is the father of defendant no. 2 and husband of defendant no. 5 and a relative of defendant no. 6 and he simply appeared on behalf of defendants no 5 and 6 for registration of the sale deed. Since respondent no. 10 acted as an agent of defendants no. 5 and 6 (vendees) only, he is not a necessary party and, therefore, his name was struck off.

4. I have heard learned counsel for the parties, perused the impugned order and also the paper-book.

5. As per the version of petitioner, the agreement to sell was executed for a consideration of ₹ 1,20,00,000/- out of which

the petitioner-plaintiff was to pay an amount of ₹ 75 lacs with regard to the purchase of one half share of the land in question whereas rest of the amount of ₹ 75 lacs was to be jointly paid by defendants no. 2 and 3.

6. Learned counsel appearing for contesting respondents submitted that even if the allegations in the plaint are accepted, respondent no. 10, being neither a party to the agreement to sell nor a beneficiary under one of the impugned sale deed is not a necessary party and, therefore, learned trial Court has rightly deleted his name from the array of defendants. I am of the view that this by itself should not have been a sufficient ground to delete the name of respondent no. 10 from the array of defendants, because serious allegations of fraud have also been made in the plaint. Not only that the prayer in the main suit is for specific performance of agreement to sell, but alternative relief for recovery of ₹ 52,75,00,000/- was also claimed. It is to be ultimately determined by learned trial Court after the parties adduce their respective evidence as to which of the defendant played a part in committing fraud upon the petitioner and against whom the relief for recovery and to what extent, would be granted.

7. The petitioner also filed a criminal complaint for offences under Sections 406, 420, 423, 464, 465, 466, 457, 468, 471, 477 and 120-B of Indian Penal Code (IPC) dated 18.03.2010 in the Court of Judicial Magistrate. Learned Judicial Magistrate has also issued summons to the accused persons including

respondent no. 10 for the said offences vide order dated 06.10.2010 (Annexure P-1).

8. Learned counsel for contesting respondents relied upon the case law in support of his contention but all those judgments pertain to the issue as to whether a person is entitled to be added as a party and not to deletion of a defendant from the array of parties. Those judgments, therefore, cannot be of much assistance to the respondents.

9. **Ramesh Hiranand Kundanmal vs. Municipal Corporation, Greater Bombay, 1992 (2) SCC 524** was a matter arising out of an application filed by Hindustan Petroleum Corporation Limited-respondent no. 2 as a defendant. The suit was filed by the appellant before the trial Court, to challenge the notice issued by the Municipal Corporation of Greater Bombay, asking him to demolish two chattels on the terrace on the ground, stating that these were unauthorized constructions. M/s Hindustan Petroleum Corporation Ltd. moved an application for being impleaded as additional defendant in the suit on the ground that there are materials to show that the constructions are unauthorized and, therefore, they are necessary party to the litigation. Hon'ble Supreme Court held that the second respondent has no interest in these chattels, and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. Since the second respondent had not a direct interest in the subject matter of the litigation and the addition of the

respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. By joining the second respondent as a party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the Rule in such cases.

10. Rule 10 (2) of Order I of the Code of Civil Procedure (CPC) under which such a power can be exercised by the trial Court, reads as under:-

**“(2) Court may strike out or add parties** —The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

11. It would also be appropriate to refer to Rules 5 and 7 of Order I CPC. Rule 5 says that it shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him. Rule 7 says that where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join

two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

12. Learned trial Court seems to have exercised its jurisdiction under sub-rule (2) of Rule 10 CPC but there is nothing to suggest in the facts of instant case that respondent no. 10 had been improperly joined as a party or that some other person in his place should have been impleaded. If respondent no. 10-defendant no. 4 is not interested to contest the suit and other defendants are appearing in the case, it would be his choice to do so. The normal rule is that a plaintiff is *dominus litis* of his litigation.

13. In **Kasturi vs. Iyyamperumal and others, 2005 (6) SCC 733**, was a suit for specific performance of agreement to sell instituted by the purchaser against the vendors. Respondents no. 1 and 4 to 11 wanted to apply for being impleaded in the said suit. In that case it was found that these respondents did not seek their addition in the suit on the strength of contract in respect of which the suit for specific performance of the contract for sale has been filed. They based their claim on independent title and possession of the contracted property. It was, therefore, obvious that in the event, respondents no. 1, 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law.

Therefore, this judgment also does not support respondent no. 10. Hon'ble Supreme Court held that a plaintiff, who has filed the suit for specific performance of the contract for sale is *dominus litis* and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law.

14. Similarly in **Ishwar Singh vs. Smt. Prem Kaur and others, 2011 (2) PLR 551**, a judgment of this Court, the applicant wanted to be impleaded as a party in the suit, claiming owner on the basis of different sale deeds which were not subject matter of challenge in the suit. That being a suit for declaration with consequential relief of permanent injunction, the prayer for addition of party in the pending suit again would not be attracted in a case where the question is for deletion of the name of defendant from the array of parties.

15. Simply because respondent no. 10 was not a beneficiary under the sale deed which is subject matter of challenge and that he acted as an agent on behalf of vendees, who are his close relatives and his photograph is also affixed on the sale deed as contended by learned counsel for the petitioner, would not be a reason to delete his name from the array of defendants as plaintiff has made serious allegations of fraud in the plaint and prayer for alternative relief for recovery has also been made. Deletion of name of respondent no. 10 in view of the allegations made in the plaint may seriously prejudice the case of the petitioner for establishing whole of his claim.

16. In view of the above, the instant petition is allowed and the impugned order dated 23.02.2011 passed by the trial Court is set aside. As a result, the application filed by respondent no. 10 for deletion of his name from array of defendants would stand dismissed.

**January 22, 2015**  
jk

**( R.P. NAGRATH )**  
**JUDGE**