

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 44 of 2015
Date of Decision: 02.3.2015.**

Jagmohan Singh

.....Petitioner

Versus

Vijay Mehta and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Lakhvir Singh, Advocate
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. K.S.Sidhu, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 30.10.2014 (Annexure P-1) whereby application moved by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

Vijay Mehta-respondent No. 1 filed a suit against respondents No. 2 and 3 for specific performance of agreement to sell dated 18.4.2007. The said suit was decreed by the Trial Court vide judgment/decreed dated 1.10.2013. Aggrieved against the said judgment/decreed, respondents No. 2 and 3 preferred an appeal. During the pendency of the appeal, petitioner filed an application

under Order 1 Rule 10 CPC praying that he be impleaded as defendant in the suit being a necessary party.

The case of the applicant was that Atma Singh, grandfather of the applicant, was owner of the property in dispute. During his lifetime, Atma Singh gave the property in question to his sons Rajinder Singh and Harmesh Singh. Jaswinder Singh filed a false and frivolous suit against Surinder Kaur and others on the basis of forged and fabricated Will dated 16.11.2003 and got a collusive decree dated 25.1.2007 in his favour. The suit had not been contested by Surinder Kaur on behalf of the petitioner. On the basis of the said decree, Jaswinder Singh in collusion with Harmesh Singh, executed the agreement to sell dated 18.4.2007 in favour of Vijay Mehta. Petitioner was not bound by the decree dated 25.1.2007. Hence, petitioner was a necessary party in the suit filed by Vijay Mehta for specific performance of agreement to sell in question.

The learned Appellate Court while dismissing the application moved by the petitioner rightly held that the application had been filed by the petitioner in collusion with Jaswinder Singh. Decree dated 25.1.2007 was passed in favour of Jaswinder Singh. A perusal of Annexure P-8 reveals that Jaswinder Singh had filed suit for declaration and permanent injunction against Surinder Kaur and others basing reliance on Will dated 16.11.2003. Petitioner was also party to the said suit and was impleaded through his mother/natural guardian-Surinder Kaur. Suit filed by Jaswinder Singh was decreed and he was declared owner to the extent of $\frac{1}{2}$ share qua the house in question. Petitioner then filed civil suit No. 60 of 10.3.2009 challenging the decree dated

25.1.2007. A perusal of Annexure P-10 reveals that the defendants had not led any evidence in the suit and, consequently, decree dated 25.1.2007 passed in civil suit No. 157 of 2.5.2006, was set aside on 31.1.2013. Since Jaswinder Singh and others had not contested the suit filed by the petitioner, challenging the decree dated 25.1.2007, it is evident that the suit had been filed by the petitioner challenging the decree dated 25.1.2007 in collusion with other legal heirs of Rajinder Singh. It appears that the application under Order 1 Rule 10 CPC has been filed by the petitioner at the instance of Jaswinder Singh (brother of the petitioner) with a view to wriggle out of the liability qua agreement to sell dated 18.4.2007.

In these circumstances, the learned Appellate Court had rightly dismissed the application moved by the petitioner under Order 1 Rule 10 CPC.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 02, 2015
Gurpreet