

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.4524 of 2015

Date of decision: 19.12.2015

Pravin Kumar

.....Petitioner

versus

Munshi Ram and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Atul Yadav, Advocate for the petitioner
Mr.Kulbushan Sharma, Advocate for the respondent

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 27.2.2015, passed by the learned Civil Judge, Junior Division, Rewari, vide which an application filed by the respondents intervenor Ram Kishan under Order 1 Rule 10 CPC to become party was allowed.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that the plaintiff -petitioner Pravin Kumar had filed a suit for specific performance against Munshi Ram on the basis of agreement to sell dated 22.11.2012. One Ram Kishan filed an application, claiming that the defendant has executed an agreement dated 26.11.2012 in his favour and that he is necessary party. It also comes out that during the pendency of the suit, defendant executed a

sale deed in favour of intervenor Ram Kishan. The lower Court allowed the intervenor to become party holding that he is subsequent vendee in whose favour the disputed property has been alienated and therefore, his presence is necessary.

The facts and circumstances, discussed above shows that Ram Kishan was claiming a subsequent agreement. On the basis of agreement, he had independent right. The present agreement dated 22.11.2012 is between the plaintiff and defendant and Ram Kishan is a stranger to said agreement. Plaintiff is seeking the specific performance of the said agreement. The defendant is stated to have acquired title in the land after the filing of the suit for which he was proceeded under Order 39 Rule 2A CPC.

Now a question is as to whether a stranger to the agreement can be allowed to become party against the wishes of the plaintiff? The matter was examined by three Judges Bench of the Hon'ble Supreme Court in Kasturi v. Iyyamperumal & others, 2005(2) RCR (Civil) 691. It was observed as under:-

“18. The learned counsel appearing for the respondent Nos.1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos.1 and 4 to 11, therefore, the same can be settled in the present suit itself.

Accordingly, it was submitted that the presence of respondent Nos.1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinafter, including the scope of the suit, we are of the view that it lacks merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because the respondent Nos.1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against the respondent No.3 to the contract. In our view, the third party to the agreement for sale without challenging the title of the respondent No.3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that

is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.”

In the present case, the appellant is claiming a subsequent agreement, for which he has independent right. Pending the suit, he got the sale deed executed which is apparently hit by rule of *lis pendence*. Plaintiff does not want to sue intervenor Ram Kishan. Therefore, against the wishes of the plaintiff, he cannot be added as party. If he feels that he had got independent right, he can always file a separate suit.

Consequently, the impugned order is set aside. The present revision is accordingly stands allowed.

19.12.2015*gk***(Kuldip Singh)
Judge**