

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

**CR No.4899 of 2013 (O&M)
Date of decision: 02.02.2015**

Arun Kumar

....Petitioner

Versus

Atam Parkash and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Parminder Singh Kanwar, Advocate for the petitioner.

Mr. Sandeep Arora, Advocate for the respondents.

Rakesh Kumar Jain, J. (Oral)

The present petition is filed against the order dated 17.05.2013 by which an application filed by respondent No.2 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short the 'CPC') has been allowed.

Counsel for the petitioner has argued that he had filed a suit for specific performance on the basis of an agreement to sell dated 3.11.2008, executed by respondent No.1, in respect of property measuring 10 marlas bearing khasra No.35//7 situated in the area of village Kotla Ganspur, Hadbast No.369, Tehsil and District Hoshiarpur. The said property was agreed to be sold @ 3,50,000/- after deducting a sum of ₹1,50,000/- paid in advance as earnest money. Since the

defendant No.1/vendee did not abide by the terms and conditions of the agreement, therefore, suit was filed.

At this stage, when the plaintiff was leading his evidence, the respondent No.2 filed an application under Order 1 Rule 10 of the CPC to become a party on the ground that she has got an agreement in her favour in respect of the property in question, executed by respondent No.1 for a consideration of ₹ 11,10,000/- out of which respondent No.1 has received an amount of ₹ 3,10,000/- as earnest money and remaining amount of ₹ 8,00,000/- was paid to the bank towards the debt of respondent No.1. The said application was allowed on the ground that since respondent No.2 has also got an agreement in her favour of the property in dispute, therefore, she is a necessary party in the suit.

Counsel for the petitioner has argued that respondent No.2 has no right, title or interest in the suit property. It is also submitted that respondent No.2 is not a party to the contract which has been entered into between him and respondent No.1, therefore, she is not a necessary party and has been wrongly impleaded by the trial Court.

Counsel for the petitioner has relied upon **Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. and others 2008 (3) RCR (Civil) 57**, wherein, it has been held that a third party or a stranger to the contract could not be added so as to convert a suit of one character into a suit of a different character.

On the other hand, learned counsel for the respondents supported the impugned order.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that this petition suffers from irregularity as respondent No.2 is not a necessary party to the suit. She has no right, title or interest in the suit property as there is no sale deed in her favour. Moreover, if respondent No.2 was having an agreement in her favour alleged to have been executed by respondent No.1 in the year 2009, she should come forward with a suit for specific performance if respondent No.1 had not honoured the agreement with her. In the absence of such suit, respondent No.2 has lost her right on account of expiry of limitation.

Be that as it may. In view of the aforesaid discussions, the order passed by the Court below is without any merit, hence the present revision petition is allowed and the order dated 17.05.2013, passed by Civil Judge (Sr. Dvin.), Hoshiarpur is hereby set aside.

February 02, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge