

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

CR No.5098 of 2015.

Date of Decision: 12.08.2015.

Lachhman Singh and others

....Petitioners.

VERSUS

Rajender Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Maharaj Kumar, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 27.07.2015 passed by learned Civil Judge (Junior Division), Assandh, vide which the application under Order 1 Rule 10 of the Code of Civil Procedure (for short, "C.P.C.") filed by the petitioners was dismissed.

The facts which need elaboration are that civil suit No.273 dated 05.05.2015 was filed by Rajender Kaur and others (respondents No.1 to 5) against Mam Chand and others-defendants (not impleaded in the present petition) for exchange of their lands. Petitioners Lachhman Singh

and others, invoking the provisions of Order 1 Rule 10 C.P.C., filed an application for being impleaded as party to the said suit. They claimed that they are owners in possession of land measuring 26 Kanals 8 Marlas being 528/4224 shares out of total land measuring 211 Kanals 4 Marlas comprised in Khewat No.123/120, Khatoni No.455 and 457 to 460 vide Jamabandi for the year 2011-2012. They also alleged that plaintiffs Rajender Kaur and others purchased land from Gaje Singh and Rambir sons of Bhola vide sale deed No.63/1 dated 12.04.2013 and Mutation No.2978 was sanctioned with regard to the said sale in Khewat No.1/1 and 123/120. The land measuring 40 Kanals 0 Marla sold vide registered sale deed No.63/1 dated 12.04.2013 by Gaje Singh and Rambir was in the ratio of land measuring 4 Kanals 11 Marlas sold by Gaje Singh and 3 Kanals 5 Marlas sold by Rambir out of Khewat No.123/120 but in actual they were entitled to sell land measuring 5 Kanals 11 Marlas only. In that manner, they had sold land measuring 2 Kanals 4 Marlas more than their share in Khewat No.123/120.

It was also the plea of the petitioners that earlier Rajender Kaur and Jitender Kaur (respondents No.1 and 2) filed a civil suit No.30 of 2015 against them (petitioners) for declaration with consequential relief, for exchange of their (petitioners') share i.e. 528/4224 land measuring 26 Kanals 8 Marlas out of total land measuring 211 Kanals 4 Marlas in Khewat No.123/120 with the land owned by them (respondents No.1 and 2) measuring 26 Kanals 8 Marlas being 528/30174 share out of total land measuring 1508 Kanals 14 Marlas comprised in Khewat No.1/1, Khatoni No.1 to 27, situated in village Uplana, Tehsil Assandh, District Karnal.

When they (petitioners) on perusal of sale deed No.63/1 dated 12.04.2013 came to know that respondents No.1 and 2 had purchased more than the share of the vendors, they asked them through their husbands to get the sale deed corrected but instead of getting the needful done they filed suit No.273 of 2015 for exchanging the land owned by them with Mam Chand and others and withdrew civil suit No.30 of 2015. With the said facts in the background, the petitioners pleaded that they being necessary parties be impleaded as defendants in civil suit No.273 of 2015.

The application was contested with vehemence by respondents No.1 and 2-plaintiffs of civil suit No.273 of 2015.

Considering the submissions made on behalf of the parties, learned trial court vide order dated 27.07.2015 came to conclusion that the petitioners were not necessary party to civil suit No.273 of 2015 and hence dismissed their application.

Aggrieved by the said order passed by learned Civil Judge (Junior Division), Assandh, the petitioners filed the instant petition.

The submissions made by Mr. Maharaj Kumar, learned counsel representing the petitioners have been considered.

As observed above, the grievance of the petitioners is that Gaje Singh and Rambir, from whom respondents No.1 and 2 have purchased land measuring 40 Kanals 0 Marla comprised in Khewat No.1 and 120 (now 1/1 and 123/120) vide sale deed No.63/1 dated 12.04.2013, had sold land i.e. 2 Kanals 4 Marlas more than their share in Khewat No.123/120. Perusal of the order of learned trial court shows that civil suit No.273 of 2015 filed by

respondents No.1 and 2 (plaintiffs) was with regard to exchange of land measuring 26 Kanals 8 Marlas comprised in Khewat No.1/1. The subject matter of the said suit had no concern whatsoever with land comprised in Khewat No.123/120. The findings recorded by learned trial court for dismissing the application of the petitioners, are as under:-

“As per version of applicants, Bhola son of Tungal was remained owner in possession of land measuring 11K-3M in khewat no.123/120 and his land was further inherited by Gian Singh, Rakesh Kumar, Gaje Singh and Rambir in equal share. Thus as per version of applicants the said Gaje Singh and Rambir were owners in possession of total land measuring 5K-11M and vide sale deed no.63/1 dated 12.4.2013 they have sold land measuring 7K-16M to plaintiffs in khewat no.123/120. Thus as per version of applicants, said Gaje Singh and Ramesh had sold land measuring 2K-4M more than their share in concerned khewat no.123/120. The applicant has not put concerned sale deeds to prove the exact share of late Bhola. But even if all the averments of applicants are admitted then also this court finds no plausible reason to implead them as party in present suit because by way of present suit the plaintiffs are alienating land measuring 26K-8M comprised in khewat no.1/1. The applicants have not disputed the title of vendors Gaje Singh and Ramesh or plaintiffs in khewat no.1/1. They are disputing the title of plaintiffs and vendors in khewat no.123/120. A perusal of pleadings further shows that the plaintiffs are acquiring land measuring 26K-8M from defendants comprised in khewat no.123/120. Thus the disputed share of plaintiffs in khewat no.123/120 which was acquired by them vide sale deed no.63/1, remains untouched. No alienation of land comprised in khewat no.123/120 is being made by plaintiff in present suit. A further acquiring of land in khewat no.123/120 by plaintiffs will not cause any prejudice to other co-shares.”

From the facts enumerated above, it is apparent that the issue raised by the petitioners has no concern whatsoever with the subject matter of civil suit No.273 of 2015 which is with regard to the land comprised in Khewat No.1/1. Even if the said suit is decreed, the share of the petitioners

in Khewat No.123/120 remains unaffected. As far as their dispute with regard to sale of land more than their share by Gaje Singh and Rambir to the respondents out of Khewat No.123/120 vide sale deed No.63/1 dated 12.04.2013 is concerned, that by no stretch of imagination has any link with the subject matter of civil suit No.273 of 2015 filed by respondents No.1 and 2 for exchange of their land in Khewat No.1/1. As mentioned by the petitioners in the pleadings and also by learned trial court in her order, the petitioners have already filed a civil suit challenging the sale deed No.63/1 dated 12.04.2013, on the basis of which mutation No.2978 had been sanctioned and according to them the vendors had sold land measuring 2 Kanals 4 Marlas more than their share in Khewat No.123/120. It appears that the petitioners were prompted to file the present application because earlier the respondents intended to exchange their land with the land of the petitioners in respect of which a civil suit was filed but when the petitioners refused to honour the agreement, the respondents withdrew that suit and entered into fresh agreement with other co-shareres of Khewat No.1/1 for exchange of their land and filed a civil suit for that purpose.

Thus, finding no irregularity or illegality in the order passed by learned Civil Judge (Junior Division), the petition is dismissed.

(SNEH PRASHAR)
JUDGE

12.08.2015.
jitender