

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

**Civil Revision No.5225 of 2014
Date of Decision: August 18, 2015**

Bhupinder Singh

.... Petitioner

vs.

Sukhpal Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the petitioner.

Mr. C.M. Chopra, Advocate for respondent No.1.

Mr. Rajinder Sharma, Advocate for respondent No.2.

- 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 petition is the order dated 17.07.2014 (Annexure P-14) passed by learned Civil Judge (Jr. Divn.), Ludhiana, vide which the application of the present petitioner under Order I, Rule 10 read with Section 151 CPC to become party in the pending suit instituted by one Sukhpal Singh was dismissed.

The undisputed facts are that once Sukhpal Singh had filed a suit against his father Joginder Singh as well as brother Surinder Singh for declaration that he is in possession of property

measuring 250 square yards fully detailed in the head note of the plaint, situated in Maharaj Nagar, Ludhiana. Permanent injunction was also sought.

The suit was filed claiming that it is a joint Hindu property and there is oral family settlement. It is also not disputed that previously the suit was decreed and challenged before this Court by filing RSA No.3503 of 2009 and the same was decided vide order dated 12.01.2012 and the suit was remanded back to the trial court to decide the matter afresh from the stage the defendants were proceeded ex parte. Now the suit is pending before the lower court.

It is also not disputed that there is pendency of the suit that earlier the present petitioner had filed application under Order I, Rule 10 CPC, which was dismissed by learned Addl. District Judge, Ludiana. A similar application was filed before this Court and this Court also dismissed the application vide order dated 27.07.2010.

The operative part of the said order is reproduced as under:

“ In view of the aforesaid fact, I am not inclined to allow the applicant to be impleaded in this case. However, the applicant is at liberty to pursue his independent remedy against aforesaid Joginder Singh, respondent, in accordance with law.”

It also comes out that in the meanwhile the present petitioner had filed suit for specific performance on 06.09.2003 on the basis of agreement to sell dated 17.08.2002 executed by Joginder Singh-defendant in favour of the present petitioner regarding the said property.

The civil suit was filed by Sukhpal Singh after the date of said agreement. Now, the suit of the present petitioner for specific performance has been decreed. According to the petitioner, this application under order I, Rule 10 CPC has been filed on fresh cause of action.

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

It is undisputed that the previous application of the present petitioner to become party under Order I, Rule 10 CPC was dismissed by learned Addl. District Judge as well as by this Court.

The fresh ground is that now decree for the specific performance has been passed in favour of the petitioner. In the said suit, in addition to Joginder Singh, executant, Surinder Singh and Sukhpal Singh sons of Joginder Singh were also party. The appeal against the said decree is still pending.

Learned counsel for the petitioner has argued that the suit is collusive between father and son. Joginder Singh is now dead and that there is nobody to look after the interest in the suit property and that the petitioner is the owner on the basis of agreement to sell and decree passed in his favour.

Learned counsel for the petitioner has relied upon the authorities of Hon'ble the Apex Court as well as of this Court in ***“Sumtibai and others vs Paras Finance Co. Regd. Partnership Firm”, 2007(10) Supreme Court Cases 82, “Thomson Press (India) Limited vs Nanak Builders and Investors Private Limited***

and others”, 2013(5) Supreme Court Cases 397, “Razia Begum vs Sahebzadi Anwar Begum and others”, 1958 AIR (SC) 886, “Gopal Singh vs Raghbir Singh and Anr.”, 2011(1) Civil Court Cases 130 and “Gurmukh Singh and others vs Janmeja Singh and others”, 2011(4) Civil Court Cases 010 (P&H).

It has been argued that even if there is a fair assemble of title or interest, the petitioner can be made party.

This contention has been vehemently opposed by learned counsel for the respondent on the ground that the matter has already been settled. The decree passed by the lower court in favour of the petitioner is still pending in appeal and has not become final.

After going through the file and hearing learned counsel for both the parties, I am of the view that the matter, whether the petitioner is to be added as party has already been finally decided by this Court. This was done before passing of the decree for specific performance in favour of the petitioner. Now, the decree for specific performance has been passed in favour of petitioner, which is pending in appeal. Meaning thereby that it has not become final. Therefore, no final rights have accrued in favour of the petitioner. However, at the same time, it is not to be lost sight that Joginder Singh is dead and that now his LRs i.e. his sons Surinder Singh and Sukhpal Singh will be interested in the title of the property.

Therefore, in such situation, the present revision petition is disposed of with a direction that if any decree is passed in the suit filed by Sukhpal Singh, the same shall be subject to the rights of the

petitioner, which are created in the decree for specific performance passed by learned Civil Judge (Jr. Divn.), Ludhiana on 07.03.2014, which may ultimately become final.

August 18, 2015
sarita

(KULDIP SINGH)
JUDGE