

203-2

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

CR No.5791 of 2013 (O&M)

Date of decision: July 14, 2015

Sita Ram

.....Petitioner

Versus

Sarwati and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Aman Bahri, Advocate
for the petitioner.

Mr. Lalit Thakur, Advocate and
Mr. H.S. Grewal, Advocate
for respondent Nos.5 and 6.

SABINA, J

Petitioner has filed this petition challenging the order dated 14.08.2013, whereby, application moved by respondent Nos.5 and 6 under Order 1 Rule 10 of Code of Civil Procedure, 1908 ('CPC' for short), was allowed.

Learned counsel for the petitioner has submitted that the petitioner has filed suit for specific performance of agreement to sell dated 22.02.2006 against Defendant Kalicharan. During the pendency of the suit, respondent Nos.5 and 6 had moved an application under Order 1 Rule 10 CPC for being impleaded as a party. The said application was liable to be dismissed as the petitioner was not claiming any relief against the said respondents. Moreover, respondent Nos.5 and 6 could not be impleaded as a party merely

because, they were co-sharers qua the suit land. Learned counsel has further submitted that in another litigation pending between the respondents and others, respondents had admitted the execution of agreement to sell dated 22.02.2006.

Learned counsel for the respondent Nos.5 and 6 has submitted that written statement (Annexure P-8) was got amended by respondents and the admission relied upon by the petitioners was withdrawn. Now, the suit filed by Ajay Kumar and others against the respondents has been dismissed.

In the present case, petitioner has filed suit for specific performance of agreement to sell dated 22.02.2006. However, the copy of the agreement is not on record. The case of the respondent Nos.5 and 6 is that they had 1/8th share in the joint land and the same had been partitioned and mutation has also been sanctioned on the basis of the said order. Plaintiff wanted to get the decree of possession by way of specific performance of agreement to sell qua the land to the extent of half share of the respondent Nos.5 and 6 which had come to them in partition proceedings. It is further the case of the respondent Nos.5 and 6 that they are in possession of the suit land.

Although, co-sharers would not be necessary party in a suit for specific performance of agreement to sell filed

against another co-sharer but the facts of the present case are peculiar. Neither the original agreement to sell dated 22.02.2006 nor its photocopy has been placed on record. It is the case of the respondent Nos.5 and 6 that they are in possession of the suit land. Hence, the learned trial Court rightly held that the respondent Nos.5 and 6 were necessary to be impleaded as a party to the suit, so as to effectively adjudicate the *lis* between the parties.

No ground for interference by this Court, is made out.

Dismissed.

However, anything observed hereinabove will have no bearing on the merits of the case.

**(SABINA)
JUDGE**

July 14, 2015

mahavir