

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

CR No.5931 of 2015.

Date of Decision: 10.09.2015.

Ram Ji Dass

....Petitioner.

VERSUS

Palwinder Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.S. Sandhu, Advocate for the petitioner.

SNEH PRASHAR, J.

This revision petition is directed against the order dated 16.04.2015 vide which the application filed by the petitioner under Order I Rule 10 of the Code of Civil Procedure (for short, “the Code”) for being impleaded as party to Civil Suit No.122A dated 04.07.2013 was dismissed.

As pleaded by the petitioner, originally Kamaljeet Kaur wife of Makhan Singh was owner in possession of property measuring 0Kanal 18 Marlas, situated in village Mehmoodpur, Tehsil and District S.B.S. Nagar (hereinafter referred to as the “suit property”) which she had purchased from Tehal Singh son of Bakshish Singh by way of written agreement dated 04.06.1999. Subsequently, vide agreement of sale dated 24.04.2011 the petitioner purchased the suit property from Kamaljeet Kaur for a total sale consideration of Rs.5,50,000/- and made part payment of Rs.2 lacs to her (vendor). The balance sale consideration amount was paid to Kamaljeet Kaur on 04.06.2012 against which an agreement and receipt was executed

on a stamp paper in the presence of witnesses. The sale deed could not be executed as the suit property was situated within "Lal Lakir" of the village. The actual physical possession of the suit property was handed over to the petitioner and he got installed in the suit property an electricity connection in his name. His household goods were lying in the suit property and he had been visiting the same on weekends as he is working in District Mohali and is residing at Chandigarh.

It is further alleged by the petitioner that on 20.05.2013 respondents No.1 and 2 namely Palwinder Singh and Makhan Singh in connivance with each other illegally broke open the locks of the suit property and forcibly occupied the same. On a complaint lodged by him, First Information Report No.63 dated 07.08.2014 under Section 427/447/448/380 of the Indian Penal Code was registered against respondents No.1 and 2 at Police Station Mukandpur, District S.B.S. Nagar.

Learned counsel for the petitioner submitted that with a view to defeat the rights of the petitioner and harass him, Palwinder Singh in collusion with Makhan Singh filed a suit for specific performance of an agreement to sell dated 23.04.2004 qua the suit property. When the petitioner came to know about the suit, he filed an application under Order I Rule 10 of the Code for being impleaded as defendant No.2 but his application has been illegally dismissed by learned trial Court vide the impugned order. Learned counsel contended that the petitioner is lawful owner of the suit property and therefore since the matter regarding sale of the said property is a matter in issue in the suit filed by Palwinder Singh, he

is a necessary party to the suit.

On consideration of the arguments of learned counsel for the petitioner, there appears to be no force in the same. The petitioner is claiming title in the suit property on the basis of an agreement to sell dated 24.04.2011 executed in his favour by one Kamaljeet Kaur. Admittedly, so far no sale deed has been executed in his favour. The suit for specific performance filed by Palwinder Singh is based on an agreement to sell dated 23.04.2004 executed by the owner in his favour, which apparently is prior in time than the agreement to sell in favour of the petitioner. Moreso, the petitioner is not a party to the agreement of sale dated 23.04.2004.

In case the petitioner has a valid agreement of sale executed in his favour by the original owner, for him also the required legal remedy is to seek specific performance of the agreement because no sale deed has so far been executed in his favour by the vendor. When he is not party to the agreement of sale in favour of respondent No.1 and admittedly is also not in possession of the suit property, he is not a necessary party to the suit filed by Palwinder Singh for specific performance of the agreement of sale in his favour.

Learned counsel failed to demonstrate any illegality or perversity in the order of learned trial Court which calls for intervention and hence the petition filed by him is dismissed.

(SNEH PRASHAR)
JUDGE

10.09.2015.
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