

**Sr. No.225
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No.6046 of 2014
Date of Decision.13.10.2015**

Ajit Singh

.....Petitioner

Versus

Jaspal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

Present: Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. Vishvanath Sharma, Advocate for
Mr. M.S.Bathi, Advocate,
for the respondent.

K. KANNAN J. (ORAL)

The suit for specific performance was brought against a party who was offered to sell the property and secure the concurrence of the sons. An application was filed by plaintiff to implead the sons. The sons claimed that they were not parties to the agreement and they could not be compelled to be impleaded. The Court had allowed for impleadment. The father is the revision petitioner before this Court. The contention made by the counsel is that it was a conjoint application filed under Order 1 Rule 10 and Order 6 Rule 17 CPC not competent and that further the plaintiff

cannot seek for enforcement against persons who were not parties to document. The counsel would refer to the decision of the Supreme Court in **Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. & Others 2008 (13) SCC 658** that held that strangers to contract could not be added so as to convert suit for one character or different character. The Court was holding that a suit for specific performance could not be enlarged to convert the same suit for title or for possession.

We have come through expansive definitions and circumstances when such amendments could be made in suit for specific performance. The farthest extent of discretion that was recognized by the Supreme Court was in **Thomson Press (India) Ltd vs Nanak Builders & Investors. Private Ltd and others reported in 2013 (5) SCC 397** that considered the issue of impleadment of a subsequent purchaser pending suit in a suit for specific performance, in defiance of the order of the Court granted in favour of the plaintiff that there shall be a restraint against the vendors from selling the property. The subsequent purchaser was actually in contempt of Court in securing to himself a purchase and while the High Court rejected the impleadment plea, the Supreme Court was holding that even if the sale were to be suspect, a subsequent purchaser were still to be heard.

These are hard times when technical pleas come up at various times, they stall the proceedings further. If the plaintiff wants to empower himself of staving off claims of near relatives by a comprehensive suit, it is fair enough that the liberal construction

must allow for an adjudication in the absence of such persons who can cause disturbance later. A stranger to a contract cannot be included in a suit for specific performance was stated by the Supreme Court in the context of a situation which would have resulted in an adjudication of title. It is not a rule of thumb at all times, for, the Supreme Court was not considering in the judgment in **Bharat Karsondas Thakkar's case (supra)**, the effect of Section 13 of Specific Relief Act. Section 13 truly contemplates a situation against a stranger. The Section reads with reference to a right of a purchaser or title against the person with no title or imperfect title. Section 13(1) reads thus:-

(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

(a)...

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance

*from the mortgagee;
(d)...*

The above provision contemplates a situation of when the vendor is in a position to obtain concurrence of other persons necessary for validating the title or discharge an encumbrancer, the Court may compel him for such a course. In this case, the agreement provides for an undertaking by the father that he will bring his sons on the stipulated date along with the document of title and get the sale deed registered. If it were to be contended that the father had no such right or the son could not be so compelled, it will be a matter for evidence at the trial and cannot be pre-judged at this stage.

The impleadment made of the son in enforcement of a peculiar recital in the agreement was perfectly justified. The challenge to the order is not tenable. Revision petition is dismissed.

**(K. KANNAN)
JUDGE**

13.10.2015
vandana