

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7032 of 2013.
Decided on:-February 13, 2015.

Parminder Kaur.Petitioner.

Versus

Shamsher Singh and anotherRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. R.S. Chauhan, Advocate
for the petitioner.

Mr. L.S. Sidhu, Advocate
for respondent No.2.

Dr. Bharat Bhushan Parsoon, J.

A suit for specific performance of contract dated 9.11.2009 filed by plaintiff Smt. Parminder Kaur, petitioner herein, against defendant Shamsher Singh, respondent herein, is pending adjudication before Additional Civil Judge (Senior Division), Moga. During the pendency of said suit, application under Order I Rule 10(2) read with Section 151 CPC for impleadment of Harwinder Pal Singh was filed by him. Notwithstanding objection raised by the plaintiff, petitioner herein, finding merit in the application, the same was allowed by the lower court vide order dated 25.7.2013, which order is under challenge in this revision petition.

2. Counsel for the petitioner seeking support from ***Bharat Karsondas Thakkar Versus M/s Kiran Construction Co. and others 2008(2) Civil Court Cases 561 (SC)*** has urged that in a suit for specific performance in terms of Section 15 of the Specific Relief Act, 1963, a stranger to an agreement of sale cannot be impleaded as a party to the suit.

3. Counsel for the respondent-applicant, on the other hand, has urged that the applicant, impleaded as a defendant, is neither a stranger nor alien to the litigation pending adjudication. It is urged that the property in dispute was mortgaged by the owner defendant in favour of a Bank against loan taken by him where the defendant became a defaulter and his property was sold by the Debts Recovery Tribunal in the public auction. It was purchased by the applicant. It is claimed that the sale was effected on 30.5.2012 and agreement to sell by the vendor-defendant has been forged, fabricated and antedated to 9.11.2009 in collusion with the plaintiff.

4. Hearing has been provided to the counsel for the parties.

5. During the course of arguments, it has not been disputed that the plaintiff is real sister of respondent-defendant Shamsheer Singh. Agreement to sell is unregistered. Suit for specific performance of the same was filed by the plaintiff, petitioner herein on or about the date of sale i.e. on 30.5.2012. Collusion between the non-applicant parties is matter of evidence but apparently when relationship of real brother and sister subsists between the defendant-owner and the plaintiff and the agreement is alleged to have come into existence after the auction sale in favour of the applicant-respondent, when the defendant, in fact, was left with no right, title or interest therein the property, the matters which are *res ipsa loquitur* cannot be side-tracked as has been tried to be done by the petitioner-plaintiff and whereas respondent-defendant no.1 has not even appeared despite service

and is continuing ex-parte in terms of Order dated 14.1.2014 of this Court.

6. Facts of the case in hand are peculiar. Freshly impleaded defendant-applicant (respondent No.2 herein) has claimed to be owner of the property in dispute by way of purchase in public auction held by the Debts Recovery Tribunal and thus, is asserting right, title and interest in the property. In tune with law laid down in ***Sumtibai and others Versus Paras Finance Company Manknwar w/o Parasmal Chordia (D) and others 2007(4) Civil Court Cases 593 (SC)***, leaving such party unimpleaded in litigation would be resulting in truncated resolution of dispute which would lack wholesomeness. It would also not be effective, competent and appropriate adjudication. Where a third party clearly has right, title and interest in the property in dispute, impleadment of such party in the suit, rather, becomes necessary to avoid multiplicity of litigation and for competent, complete and effective adjudication of the litigation among the parties. Reference in this regard may be made to ***Satish Kumar Versus Gurdir Singh Ghuman 2001(1) RCR (Civil) 453 (P&H)*** and ***Harnam Singh Versus Smt. Gurbachan Kaur and another 1991 Civil Court Cases 820 (P&H)***.

7. Looking from another angle, applicant-respondent-defendant claims ownership in the suit property even earlier to filing of the suit by the plaintiff, petitioner herein, who is real sister of the respondent-vendor-defendant who was in litigation with State Bank of Patiala before the Debts Recovery Tribunal and this property having been sold in public auction had lost her title in the said property.

8. The lower court was right in allowing application of the respondent-applicant for impleadment as one of the defendants to avoid multiplicity of litigation. Relevant observations of the lower court in the

impugned order with approval are reproduced as below:

“I find that impleading of applicant Harwinderpal Singh as party to the present case is necessary for the effective disposal of this suit and to avoid multiplicity of litigation. The question whether it is the result of collusion between plaintiff and defendant, who, as per the applicant are brother and sister can be effectively dealt with only if Harwinderpal Singh is impleaded as party.”

9. The impugned order is not only well-written but is elaborate wherein discussion of facts as also attending circumstances with law applicable has effectively been made.

10. Keeping in view the facts and circumstances discussed above, affirming the impugned order dated 25.7.2013 (Annexure P-5) of the lower court, this revision petition, being devoid of any merit, is dismissed.

February 13, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes