

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7116 of 2012 (O&M)

Date of decision:12.01.2015

Bhagwani & others

....Petitioners

Versus

Daya Nand & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.R.N.Lohan, Advocate, for the petitioners.

Mr.Praveen Hans, Advocate, for respondent No.4.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the plaintiff-petitioner, under Article 227 of the Constitution of India, is to the order dated 08.10.2012 (Annexure P1), passed by the Addl.Civil Judge (Sr.Divn.) Hansi, whereby the application filed under Order 1 Rule 10 read with Section 151 CPC for impleading Om Parkash Saini as party in the suit for specific performance of an agreement dated 15/16.03.2000, has been allowed. The suit had been filed by the predecessor-in-interest of the present petitioner, namely, Ram Kumar.

Counsel for the petitioner has pointed out that initially the suit was decreed on 08.12.2004 and the appeal, filed by respondents No.1 to 3, the original defendants, was also dismissed. In RSA No.2904 of 2006, the matter was remanded on 04.02.2010, on account of the fact that defendants No.2 & 3 were minors. During the interregnum period, the suit had been filed by the applicant on 10.01.2007 for enforcement of an agreement dated 17.09.1999, against respondents No.1 to 3. The Trial Court has allowed the application which had been filed under Order 1 Rule 10, filed on 16.07.2012.

It has been time and again held that in a suit for specific performance, stranger to the sale cannot be impleaded as the dispute is between the parties to the contract. Reference can be made to Section 15(a) of the Specific Relief Act, 1963 which provides that specific performance can be obtained by a party to the contract in question. The principles of *dominus litis* and the right of the third party to be impleaded in a suit for specific performance were noticed by a three Judges Bench of the Apex Court in **Kasturi Vs. Iyyamperumal & others (2005) 6 SCC 733** and it was held that the applicant would be at liberty to take recourse to the relevant provisions of the CPC to enforce his rights but could not be impleaded in the suit for specific performance as it would change the character of the suit. Relevant observations read as under:

“11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker v. Small* 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law,

giving damages only for the non- performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it." [Emphasis supplied]

12. The aforesaid decision in 40 E.R. 848 was noted with approval in (1886) 2 Ch. 164 (De Hogton v. Money) at page 170 Turner, L.J. observed:

"Here again his case is met by (1834) 40 E.R. 848 in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed."

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

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15. As discussed hereinearlier, whether respondent Nos. 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of respondent Nos. 1 and 4 to 11 before the Court would be necessary to enable it effectually

and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos. 2 and 3 and whether contract was executed by the appellant and the respondent Nos. 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos. 2 and 3. It is an admitted position that the respondent Nos. 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos. 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of [Vijay Pratap and Ors. v. Sambhu Saran Sinha and Ors.](#) , this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the respondent Nos. 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos. 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos. 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos. 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos. 1 and

4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos. 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No. 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being the respondent Nos. 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.”

Thereafter, in *Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. & others 2008 (13) SCC 658*, the said view was followed and the order allowing the impleadment by the High Court was set aside.

The sequence of events has already been noticed. The agreement which has been set up by the applicant-respondent No.4 was pertaining to an agreement dated 17.09.1999 which had never been executed and extension had been taken till July, 2005. In such circumstances, this Court is of the opinion that the Trial Court was not justified in impleading the said person in the suit for specific performance. The principles of *dominus litis* does not permit a person who has no interest in the suit to be impleaded as a party, especially once the plaintiff is not seeking any relief against him. In such circumstances, the order which has been passed by the Trial Court dated 08.10.2012 (Annexure P1) cannot be said to be justified and is hereby quashed.

Revision petition stands allowed in the abovesaid terms.

12.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE