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

C.R. No. 7459 of 2015
Date of decision:- 05.11.2015

Anand Saroop Malik & ors.

...Petitioners

Versus

M/s Akashdeep Housing Development Finance
Pvt. Ltd & anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. M.L. Sharma, Advocate
for the petitioners.

RITU BAHRI J.(Oral)

Challenge in this revision petition is to order dated 15.07.2015 passed by learned Civil Judge Rohtak vide which the application filed by the plaintiff/petitioner (herein after to be referred as 'the petitioner') under Order 1 Rule 10 CPC, has been dismissed.

Petitioner filed a suit for specific performance based on alleged agreement to sell dated 17.11.2008. This property had already been acquired by the State Government, vide award dated 30.01.2009. Defendant No. 1 through defendant No. 2 entered into the above agreement to sell dated 17.11.2008 with plaintiff No. 3 through plaintiff Nos. 1 and 2, who are the partners and transferred the property mentioned in the plaint, for a total sale consideration of Rs.1,75,00,000/-. The possession was handed over to the firm. The date of execution and registration was fixed on 23.04.2009. Thereafter, the land was acquired by the State Government, vide award dated 30.01.2009. This fact came to the knowledge of the petitioners on 23.04.2009 at the time of execution of the sale deed. The defendants did not disclose the fact of acquisition of land by the Government. The petitioners paid Rs.1,75,00,000/- to respondent No. 1 through respondent No. 2 and respondent No. 2 received the excess amount of Rs.2,55,000/- i.e over and above the agreed sale consideration of Rs.1,75,00,000/-, the details of which are mentioned in para No. 3 of the petition. On 23.04.2009, the petitioner went to the office of Sub Registrar concerned but respondent No. 2 being authorized Director of respondent No. 1 failed to be present at the office of Sub Regisrar at Sampla and petitioner No. 1 marked his present by getting an affidavit attested by Executive Magistrate Sub Registrar Sampla. Thus, the petitioners have performed their part of contract.

Thereafter, on 28.07.2010, respondent No. 1 filed a Civil Suit No. 204 of 2010 before the Vacation Judge, Rohtak for permanent injunction in which Punjab National Bank, the petitioner herein and petitioner No. 2 herein and Anil Kumar Mehta, erstwhile partner of

Mccoy Hotel and Resort, a partnership firm were arrayed as defendants. In the same Civil suit, the respondents admitted handing over of the possession of the property to the petitioners and it was alleged therein that Anand Sarooop Malik and Anil Kumar constituted a firm with the name and style of M/s Mccoy Hotel and Resorts having its office at 886/2, East Park Road, Karol Bagh, Delhi and agreement to sell was entered in furtherance of the aforesaid MOU dated 14.11.2008 agreeing to purchase the aforesaid property of the respondents for Rs.1,75,00,000/- as per the terms and conditions of agreement to sell dated 17.11.2008 and the purchase was to be completed within a period of six months i.e upto 16.05.2009. The suit is still pending in the Court of learned Civil Judge, Jr. Divn. Rohtak. A complaint was also lodged on 19.08.2009 against the respondents. The petitioners came to know that the aforesaid property have been acquired by the State Government vide notification u/s 4 of the Land Acquisition Act followed by declaration u/s 6 of the Land Acquisition Act and award dated 30.11.2009 (P-4). Upon knowing of the aforesaid factual position, the petitioners made several representations to the State Government not to disburse the compensation (P-5). Thereafter, the above said application has been filed by the petitioners under Order 1 Rule 10 CPC for impleading Principal Secretary, Industries and

Commerce, District Revenue Officer-cum-Land Acquisition Collector, Rohtak and Director, HSIIDC, Panchkula as defendant Nos. 3, 4 and 5, which was dismissed by the trial Court on 15.07.2015.

Learned counsel for the petitioner submits that while dismissing the application of the petitioners, it has been observed that the Revenue authorities sought to be impleaded as part are Government officials and they are not party to the contract between plaintiffs and defendants in the agreement to sell dated 17.11.2008. Hence, they are not required to be impleaded as party in the suit.

The question for consideration before this Court is that whether the Government officials who were not parties in the agreement to sell entered between plaintiffs and defendants, can be impleaded as party in the suit.

Reference has been made to a judgment of Co-ordinate Bench of this Court titled as ***Ram Pat vs. Maha Singh, 1998 (3) RCR (Civil) 187*** wherein it has been held that in a suit for specific performance of an agreement to sell, a person who is not a party to the agreement to sell is not entitled to be impleaded as party. If such a person is impleaded as a defendant, it will change the nature of the suit and will enlarge its scope to the suit for title.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court in a case of ***Bharat Karsondas Thakkar vs. M/s Kiran Construction Co. and others, 2008(3) RCR (Civil) 57*** wherein it has been held that in a suit for specific performance, a third party or stranger to the contract could not added so as to convert a suit of one character into a suit of different character. Scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession. Any attempt to implead a third party to the contract would be hit by the provisions of Section 15(a) of the Specific Relief Act. In para 21, it has been observed as under:-

> *21. Having carefully considered the submissions made on behalf of the respective parties, and the decisions cited on their behalf, we are of the view that the Division Bench of the High Court erred in law in allowing the amendment of the plaint sought for by the respondent No.1 herein as the plaintiff in the suit. Even if the bar of limitation is not taken into account, the plaintiff, namely, the respondent No.1 herein, is faced with the ominous question as to whether the amendment of the pleadings could have at all been allowed by the High Court since it completely changed the nature and character of the suit from being a suit for specific performance of an agreement to one for declaration of title and possession followed by a prayer for specific performance of an agreement of sale entered into between its assignee and the vendors of the assignees. Along with that is the*

other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title. This aspect of the matter has been dealt with in detail in Kasturi's case (supra). While holding that the scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession, Their Lordships observed that a third party or a stranger to the contract could not be added so as to convert a suit of one character into a suit of a different character."

Reference at this stage can be made to judgment of Hon'ble the Supreme Court of India in a case of ***State of Assam v. U.O.I, 2010 (1) SCC 408*** wherein it has been held that a necessary party is one with whom, no order can be made effectively and proper party is one in whose absence an effective order can be made out whose presence is necessary for a complete and final decisions of the question involved in the proceedings.

Section 15 of the Specific Relief Act reads as under:-

"15. Who may obtain specific performance.—Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;
(b) the representative in interest or the principal, of any party thereto: Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

© where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the reminderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract."

In the facts of the present case, the respondents did not disclose to the petitioners about the acquisition proceedings. Further the petitioners were handed over the possession after receiving Rs.1,75,00,000/-. The petitioners at best can have the remedy to file its objections in the reference proceedings. In a suit for specific performance, the Government officials cannot be impleaded as party as they were not party to the agreement to sell.

Applying the ratio of law laid down in the aforesaid judgments, no ground is made out to interfere in order dated 15.07.2015 passed by learned Civil Judge Rohtak.

The petition stands dismissed accordingly.

November 05, 2015 (***RITU BAHRI***)
G Arora ***JUDGE***