

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

**CR No.7993 of 2013 (O&M)
Date of decision: 20.01.2015**

Suman

....Petitioner

Versus

Jai Dayal and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. J.P.Sharma, Advocate for respondents No.2 and 3.

Rakesh Kumar Jain, J. (Oral)

Jai Dayal-respondent No.1 had expired. An application for bringing on record his legal heirs was filed. The said application was allowed and notice was issued to his legal heirs.

As per office report, respondent No.3 has been served through his wife and Hoshiar Singh and Devinder, two other sons of Jai Dayal are being represented by Mr. J.P.Sharma, Advocate. So far as the LRs No. 4 to 6 are concerned the summons sent to them have not been received back served or otherwise.

Counsel for the petitioner has submitted that at this stage, he would not press this case against respondents No.4 to 6, therefore, service upon them may be dispensed with. I order accordingly.

This civil revision is directed against the order dated 20.11.2013 passed by the trial Court vide which an application filed

under Order 1 Rule 10 of the C.P.C. for impleading Smt. Bimla wife of Mahabir Prasad, resident of village Hazipur, Tehsil Narnaul, District Mohindergarh, as defendant No.4, was dismissed.

Learned counsel for the petitioner has submitted that he has filed a suit for specific performance in respect of land bearing khewat No.44 Khatoni No.51 khasra No.28//11/10/02, Min North-West total measuring 1 kanal situated in village Hazipur, Tehsil Narnaul, District Mohindergarh which was agreed to be sold to him on 15.04.2011. Defendant No.1 executed a release deed dated 19.07.2011 in favour of defendants No.2 and 3, who further alienated two kanals in favour of said Bimla Devi out of khewat No.44 Khatoni No.51 vide sale deed bearing No.1266 dated 27.06.2013. Thus, the petitioner filed an application to implead said Bimla as a party to the suit in order to challenge the sale deed in her favour which has been effected out of the suit property. However, learned Trial Court dismissed the application on the ground that Bimla Devi has purchased 40/30 share in the above noted land measuring 4 kanal 8 marla, therefore, the land purchased by her is separate than the land in dispute.

Counsel for the petitioner has submitted that on the one hand, the Court has passed the aforesaid order and on the other hand, it has been observed that the plaintiffs have separate independent remedy of filing a suit for injunction against Smt. Bimla. In any case, it is also submitted that the land measuring 4 kanal 8 marla was purchased by Smt. Bimla Devi, out of which 1 kanal land was agreed to be sold to her. Therefore, Bimla Devi by virtue of said sale deed dated

15.4.2011 has become owner of 1 kanal of land which is subject matter of the present litigation. It is also submitted that she is a necessary party.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the trial Court has committed a patent error while dismissing the application filed by the petitioner on the ground that Bimla Devi is not a necessary party as the land purchased by her is different land which is agreed to be sold to the petitioner. As a matter of fact, the trial Court passed a contradictory order. On the one hand, the aforesaid observation has been made, on the other hand, the plaintiff has been given liberty to file separate suit against Bimla Devi. If the land in dispute which is agreed to be purchased by the petitioner is different land from the land sold to Bimla Devi, there is no cause for her to challenge the sale deed by way of separate suit. Moreover, it is the case of the respondent that Bimla Devi had purchased 40/30 share in the above noted land measuring 5 kanal 8 marla. Keeping in view, the aforesaid facts and circumstances, I am of the considered opinion that Bimla Devi is a necessary party in the suit as it would be difficult for the petitioner to take possession of the suit land, if she is not allowed to join as a party to the suit.

Accordingly, the present petition is allowed.

January 20, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge