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

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Date of Decision: 13.01.2016

Rajesh Pandey

... Petitioner(s)

Versus

Narender Kumar Bhatia and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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. Bharat Bhushan Sharma, Advocate,
for the petitioner.

Mr. Adish Gupta, Advocate,
for respondent No.1.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.01.2014 (Annexure P-3) passed by learned Civil Judge (Sr. Divn.), Faridabad whereby application under Order 1 Rule 10 CPC filed by the petitioner for impleading himself as a defendant in the suit for specific performance, has been dismissed.

Brief facts relevant for disposal of the revision petition are

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to the effect that originally, the house in dispute was allotted to Smt. Malti Rani Pandey, mother of petitioner and respondent No.2 by the Housing Board Haryana vide allotment letter dated 08.11.1977 (Annexure P-4). She died on 23.12.1994 which is proved from death certificate (Annexure P-5) issued by the Municipal Corporation, Faridabad. During her life-time, she allegedly executed Will dated 15.11.1994 in favour of her sons i.e. petitioner and respondent No.2, according to which, ground floor of the house in dispute was given to the petitioner and first floor was given to respondent No.2. Now the petitioner, being owner of $\frac{1}{2}$ share, is living in the portion of the disputed house to the extent of his share. Respondent No.2 is not competent to sell the house without the consent of the petitioner. Hence, the petitioner filed application for impleading himself as party in the suit for specific performance which has been dismissed vide impugned order dated 20.01.2014 (Annexure P-3). Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contends that even if the Will (Annexure P-6) is ignored, then petitioner is entitled to natural succession on account of death of her mother-Smt. Malti Rani Pandey. Now respondent No.1-Narender Kumar Bhatia has entered into an agreement with proforma respondent No.2-Kamal Pandey, brother of the petitioner in respect of the house in dispute. Learned counsel further

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contends that respondent No.2-Kamal Pandey in connivance with the officials of the Housing Board got the conveyance deed executed in his favour in respect of the house in dispute allotted to his mother and on that basis, no right accrues in favour of respondent No.2-Kamal Pandey to enter into an agreement to sell with respondent No.1 in respect of the house in dispute including the share of the petitioner. Learned counsel further contends that if the case of the petitioner remains unrepresented/undefended, his rights will be affected. In such circumstances, the petitioner is a necessary party and is required to be impleaded as defendant No.2 in order to defend his case. In support of his contentions, learned counsel relies upon *Sumtibai and others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors.* 2007(4) R.C.R.(Civil) 524.

Per contra, learned counsel for respondent No.1 vehemently opposes the contentions of learned counsel for the petitioner and contends that conveyance deed has already been executed in favour of respondent No.2 in respect of the house in dispute and the petitioner has never challenged it. As such, the property in dispute has absolutely devolved in favour of respondent No.2 and the petitioner is not a necessary party and not required to be impleaded as a party in the suit.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the allotment was in the name of Smt. Malti

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Rani Pandey, mother of petitioner and respondent No.2. After her death, the house in dispute must have also gone to the share of petitioner and respondent No.2 as per the principles of natural succession. Even if the Will (Annexure P-6) is ignored, the petitioner has a right in the house in dispute which is alleged to have been sold to respondent No.1. So far as the issue of conveyance deed in favour of respondent No.2 is concerned, learned counsel for the petitioner submitted that the same has been got fraudulently and neither any consent of the petitioner has been obtained, nor any release/relinquish deed has been issued to the effect that the petitioner has forgiven his rights in the property in dispute. Be that as it may, the fact remains that the property in dispute which is alleged to have been sold to respondent No.1, was allotted to Smt. Malti Rani Pandey and the petitioner being her son has a right to defend his case otherwise rights of the petitioner will be affected. As such, the petitioner being a necessary party, is required to be impleaded as defendant No.2.

In view of above discussion and following the law laid down in *Sumtibai's case (supra)*, the instant revision is allowed, impugned order dated 20.01.2014 (Annexure P-3) is set aside and the petitioner is impleaded as respondent No.2. He will be at liberty to file written statement and defend his case in accordance with law.

Any observations made hereinabove are for the limited purpose of deciding the application for impleadment of party and the same will not be taken into consideration for any other purpose. This

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Court has no doubt that the trial Court shall decide the suit on merit in accordance with law.

13.01.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge