

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

**CM-19427-2016 &
CM-19428-CII-2016 IN/AND
CR-2335-2016 (O&M)
Date of decision : 03.10.2016**

Rakesh Sehgal

... Petitioner

Versus

Dhruv Sehgal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Viren Jain, Advocate
for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

With the consent of counsel for the parties, the main petition is taken on board for hearing today itself.

The petitioner-plaintiff is aggrieved of the impugned order dated 09.02.2016 (Annexure P-5), whereby the application at the instance of respondent No.1-Dhruv Sehgal under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, seeking impleadment as party/defendant No.3 in a suit for partition of SCF No.14 Sector 8-B, Chandigarh and Rendition of Accounts; and suit for mandatory injunction restraining defendant No.2 from making the payment of rent outside the Court, has been allowed.

Mr. Viren Jain, learned counsel appearing on behalf of the petitioner-plaintiff submits that Dhruv Sehgal being claiming the legal representative of Shanti Sehgal had filed a suit confirming of joint

possession of the plaintiff as owner by way of specific performance of the family settlement dated 06.12.1990 executed by the defendant Rakesh Sehgal with regard to the ½ share in the aforementioned property and also for decree for permanent injunction, whereas the present suit as noticed above is for partition of the SCF No.14 Sector 8-B, Chandigarh, which is as per the record of the right. Both the suits are being tried in the same Court, though, the application for consolidation was moved at the instance of the defendant in the suit for partition subject to the challenge by the aggrieved party.

He further submits that the petitioner-plaintiff is *dominus litis* as no stranger can be a party in a suit for partition. If at all, Navnit Sehgal succeeds in obtaining a decree in the suit aforementioned, the partition would be subject to its outcome, but not in the manner and mode. In support of his contentions, he relies upon the judgment passed by this Court in CR No.3086 of 2015 titled as “Ram Parkash Yadav V/s Sarla Monga and others” decided on 11.01.2016, thus, urges this Court setting aside the impugned order under challenge.

Per Contra, Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. Varun Goyal, learned counsel appearing on behalf of respondent No.1 submits that after demise of Shanti Sehgal, Dhruv Sehgal has been impleaded as LR. Rakesh Sehgal as per the family settlement dated 06.12.1990 had relinquished his right in favour of Shanti Sehgal. Shanti Sehgal executed a registered Will in favour of Dhruv Sehgal. It is, in that circumstances, the suit aforementioned was filed, accordingly, application for impleading as party/defendant No.3 was moved which has, rightly so, been allowed, as Dhruv Sehgal acquired right and interest in the

property on the basis of the Will. Dhruv Sehgal is not only necessary, but property party, thus, the suit can not be decided in his absence, seeks indulgence of this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit and substance in the submissions of Mr. Viren Jain, for, the family settlement does not confer a right as it has yet to seek the nod of the Court in a pending suit. The Will is on the basis of the some right having accrued in favour of Shanti Sehgal. Until and unless that right is not rectified, Dhruv Sehgal cannot interject and seek the impleadment in the present suit. Of course, in case, Dhruv Sehgal succeeds in the suit for possession on the basis of the specific performance, the decision of the present suit would be definitely outcome of the same, but as per the present record of right, only Rakesh Sehgal and Navnit Sehgal are shown as owners to the extent of the half share each, which in the suit for partition are required to be impleaded. This aspect has not been taken care of, much less, noticed by the Court below. In my view, Dhruv Sehgal is not essential and necessary party for the adjudication of the present suit and accordingly, the impugned order dated 09.02.2016 (Annexure P-5), is hereby set aside.

The present revision petition stands allowed.

03.10.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**