

Civil Revision No.2699 of 2014

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.2699 of 2014(O&M)

Date of Decision: 2.8.2016

Avtar Singh

--- Petitioner

versus

Balishwar Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.H.R.Kapil, Advocate
for the petitioner**

**Mr.H.R.Nohria, Advocate
and Mr. Rohit Joshi, Advocate
for respondent Nos. 2 to 6**

Rekha Mittal, J.

The present petition lays challenge to order dated 18.3.2014 passed by the Civil Judge (Senior Division), Barnala whereby application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure

(in short “CPC”) has been dismissed.

Balishwar Singh Dhaliwal, respondent No. 1 has filed a suit for specific performance of agreement to sell dated 19.4.1994 on the premise that Kartar Singh and others agreed to sell the suit land and failed to perform their part of the agreement. In the said case, the present petitioner, successor-in-interest of Balbir Singh (his father since deceased) filed the instant application for being impleaded as a defendant on the plea that Kartar Singh and others entered into an agreement to sell the suit land with Sh. Balbir Singh on 3.4.2006 and Balbir Singh has filed a suit for specific performance of the agreement that is pending in the Court.

The learned trial court after reply having been filed by respondent No. 1 and hearing counsel for the parties, dismissed the application with the observations that the agreement dated 3.4.2006 is subsequent one and the applicants are stranger to the agreement dated 19.4.1994. The decree for specific performance, if given, would bind only executants of the sale deed namely the plaintiff and defendants and would not affect position of strangers to the agreement. It has further been held that the plaintiff is a *dominus litus* in the suit and should not be forced to fight with the person against whom he does not seek any relief. Moreover,

allowing the present application will enlarge scope of the suit and change its nature. To sum up, it was held that applicants are neither necessary nor proper party.

Counsel for the petitioner has submitted that Kartar Singh and others executed agreement dated 3.4.2006 for sale of 11/30 share out of land measuring 284 kanals situated at village Uggoke and received huge amount towards earnest money. It is further argued that the present suit appears to be the result of collusion between the parties. The petitioner alongwith others who have semblance of title/interest in the property in dispute are required to be impleaded as a party. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court ***Sumtibai and others vs. Paras Finance Company Mankanwar W/o Parasmal Chordia (D) and others 2007(4) Civil Court Cases 593 (SC)***.

Counsel for respondent Nos. 2 to 6 has supported the impugned order with the submissions that a three Judge Bench in ***Kasturi v. Iyyamperumal and others 2005(2)RCR (Civil) 691*** has dismissed the application of a stranger to the contract to be impleaded as a party in a suit for specific performance for sale of property, on a detailed consideration of the matter and for the reasons recorded in paras 14 to 18.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Hon'ble the Supreme Court of India in ***Kasturi's case (supra)*** decided by a three Judge Bench has held that a stranger/third party to the contract cannot be added as a defendant in the suit nor respondent Nos. 1 and 4 to 11 can be allowed to raise the question of title in the suit for specific performance by enlarging its scope. In the light of authoritative enunciation of law laid down in ***Kasturi's case (supra)***, I find myself unable to accept the submissions made by counsel for the petitioner that the order passed by the trial court suffers from any error much less illegality as would call for intervention.

To be fair to the petitioner, counsel has referred to judgment of the Apex Court in ***Sumtibai and others' case (supra)*** decided by a two Judge Bench. In ***Sumtibai and others' case (supra)***, the main issue before the court was as to whether the legal representatives of deceased Kapoor Chand impleaded as such on an application filed under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC should be permitted to file additional written statement to take such pleas which are available to them. The said question was answered in positive in favour of Sumtibai and others, the

appellants before the Court. However, in the said case, counsel for the respondents/plaintiffs relied upon the decision in *Kasturi's case (supra)* and the court held that the aforesaid decision is clearly distinguishable and the said decision can only be understood to mean that third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. It was held that the said decision will have no application where a third party shows some semblance or interest in the property in dispute. In the case at hand, the petitioner alongwith others sought to be impleaded as defendants by propounding an agreement purported to be executed by Kartar Singh and others in favour of Balbir Singh, their predecessor in interest. As per the settled position in law, an agreement to sell does not create any right in immovable property. This apart, Balbir Singh, predecessor in interest of the petitioner has already resorted to appropriate proceedings for specific performance of the agreement and the same would be decided by the Court in due course of time. The trial court has rightly held that the judgment passed in the suit filed by respondent No. 1 neither would be binding upon the petitioner and his co-applicants nor he is a party to the agreement, therefore, is neither a necessary nor a proper party for complete and effective adjudication of the

matter in controversy. In this view of the matter, the petitioner cannot derive any advantage to his contention from the judgment in *Sumtibai and others' case (supra)*.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

2.8.2016

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes