

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

**CR No. 3086 of 2015 (O&M)
Date of decision: 11.01.2016**

Ram Parkash Yadav

... Petitioner

versus

Sarla Monga and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gaurav Mohunta, Advocate, and
Ms. Komal Abrol, Advocate for the petitioner.

Mr. Sukhwinder Singh Sudan, Advocate,
for respondent Nos. 1, 2(b) and LRs of respondent No.5.

Mr. Gurcharan Dass, Advocate for respondent Nos. 3 & 6.

Mr. Adarsh jain, Advocate for respondent No.11.

K.Kannan, J. (ORAL)

The revision is against the dismissal of an application filed by a person that claimed to have an agreement of sale in respect of two of the items of properties. The suit is for partition of properties who were all claiming right to the estate of one Kuldev Sahni. It is alleged to have been bequeathed in favour of his brother Jaidev Sahni. The plaintiff would not admit the Will and has staked the claim as legal heir. The 3rd party applicant who moved the petition for impleadment was claiming under an agreement of sale alleged to have been executed on 20.06.2006. Admittedly, it was not registered and the period stipulated for completion of the sale deed under the agreement has also expired. His contention is that he has parted with Rs. 10,00,000/- under the agreement and his vendor Jaidev Sahni kept promising to execute the sale deed but he died in the year 2010 without fulfilling the promise.

According to him, he should be heard on his objections about the plaintiff's claim, for, the plaintiffs cannot seek for partition without minding the right acquired by the petitioner. In a suit for partition every party is in the position of the plaintiff and any one who has a legally enforceable right shall be permitted to be brought on record to quell of possible claims in future. In this case, as an agreement holder, his right of enforcement of the alleged agreement is no longer available. He cannot be, therefore, treated as a person having any interest to be heard. If according to the applicant the legal heirs of Jaidev Sahni themselves have no objection he may secure and perfect his title to the extent possible by getting a sale deed and also protect his possession through his vendor. It will be completely alien to a suit for partition to consider whether there had been an agreement of sale in favour of the 3rd party if such an agreement has not fructified into a sale to be protected in his possession. If the agreement is also not registered the possible inference is that the protection under Section 53A of the Transfer of Property Act will also not be available. Allowing for impleadment for 3rd party will bring needless confusion at the trial and the rejection of the application before the Court below was perfectly justified. The applicant may have other independent remedies if he so desires against his vendor or the legal representative of his vendor, but, he can have no remedy in the present suit for partition.

The impugned order is maintained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

11.01.2016
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