

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

CR No. 2995 of 2014 (O&M)

Date of decision: 29.02.2016

Kulbir Singh and another ... Petitioners

versus

Balwinder Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rakesh Chopra, Advocate, for the petitioners.

Mr. G.S. Punia, Advocate with

Ms. Harveen Kaur, Advocate for the respondents.

K.Kannan, J. (ORAL)

The revision petition is against the order directing impleadment of the 3rd party to the agreement. The impleadment was sought on a plea that the applicants have a share in the very same subject matter with the plaintiffs' vendors and the suit had been instituted on 29.05.2007 claiming right in the property. The plaintiffs' suit for specific performance of his own agreement said to have been executed on 23.05.2007 was sought to be enforced through a suit filed on 22.06.2008. The contention by the 3rd parties was that the plaintiff's suit came to be instituted subsequent to the suit filed by the 3rd parties against the vendor and their own suit had also fructified into a decree that was passed on 20.03.2013. It was therefore, sought to be contended that vendors had lost whatever rights they had through the agreement which was a subject of suit filed by the 3rd parties prior to the institution

of the suit by the plaintiffs and the Court shall not exercise its discretionary relief. Such a contention could be properly examined only if they are brought on record. The said application was allowed by the trial Court and the revision is against the said order by the plaintiffs.

Learned counsel relies on the decisions of the Hon'ble Supreme Court that hold that the suit for specific performance shall not be converted in to a suit for title. In terms of Section 15 (1)(a) of the Specific Relief Act, the agreement could be enforced only between the parties to the agreement and consequently the 3rd party who was not a party to the agreement which is sued upon shall not be treated as a necessary party. The counsel relies on the judgment in Amit Kumar Singh Vs. Shivnath Mishra @ Gadasa Guru, 1995 (3) SCC 147 that examined the issue of whether a decree obtained by a 3rd party acquiring the status as a co-owner during the pendency of suit for specific performance was necessary to be impleaded and held that a person who purchased or obtained a right against the vendor cannot be treated as an assignee for an impleadment under Order 22 Rule 10 CPC. The counsel would also refer me to the decision in Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. & others, 2008 (3) RCR Civil 57 that reiterated the principle that a suit for specific performance will not be converted into a suit for title and any attempt to implead the 3rd party to the contract could be hit by the provisions of Section 15(1)(a) of the Specific Relief Act.

I would find both the decisions referred to above cannot

really apply to the present case, for the reason, that the person who sets up title against the vendor does not seek for an adjudication of the right of the right of the vendors but contends that his suit had indeed been filed on 29.05.2007 and it relates to an assertion of right as heir all along with the plaintiff vendors and consequently the suit filed by the plaintiff which has come about subsequently in respect of the very same subject matter will necessarily have to take notice of an event that has taken place between the time when the plaintiff was propounding an agreement namely, on 23.05.2007 to 20.06.2008 when his suit was filed. This case does not really involve the issue of decision regarding title but it will be surely relevant for consideration of whether the Court will exercise its discretionary relief in favour of the plaintiff in a situation where the vendors have committed themselves to a compromise decree recognizing the 3rd parties to be entitled to the property even prior to the suit filed by the plaintiff in the instant suit.

There are two ways of looking at it, one, if an impleadment would be proper to consider any of the reliefs that are necessarily to be decided in the instant suit. It is not a case where the vendors could deny that there had been a suit instituted against them on the basis of a claim to natural succession through a common arrestor . The adjudication has a sure bearing for invoking the discretion under Section 20 of the Specific Relief Act. Another way of looking at the issue is the fact that the plaintiffs' suit for specific performance has to grapple with an issue of whether the defendants have in any way fettered themselves by the

conduct in complying with the terms of the decree even if a decree were to be passed. In this case, the agreement which had been sued upon by the 3rd party in respect of which a compromise decree has also passed will be relevant for the Court consideration of the enforceability of the agreement later by the plaintiff. It would appear that the compromise decree itself is being attacked by an independent suit by the vendors and if it were to be that yet another suit was pending, I would only direct that if it is pending in the same Court, the Court shall take up both the instant suit and the suit filed by the vendor simultaneously so that needless conflict of judgments could be avoided. If it is pending in any other Court, either party may move an application before the District Judge for the transfer of the other case filed by the vendor against the 3rd party challenging the compromise decree and bring it for simultaneous trial and disposal.

There has been recently a trend to accommodate applications for impleadment even in extreme situations, one such case was presented through Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Pvt. Ltd. 2013 (5) SCC 397. The court was allowing for impleadment of a purchaser during the pendency of the suit and against an order of injunction granted in the suit for specific performance. The order of impleadment of the purchaser which was denied by the High Court on a reasoning that the sale itself was valid and void being in disobedience of the order of injunction, was interfered by the Hon'ble Supreme Court on the reasoning that even if the sale were to be invalid,

it would be appropriate that the adjudication is made in the presence of the purchaser.

The issue of impleadment under Order 1 Rule 10 CPC is not necessarily to be seen only on the touchstone of whether the party is necessary or not. The impleadment of a proper party is always a consideration if the court believes that such an impleadment will dispel multiplicity of proceedings later and remove scope for conflict of judgments. Even without any party moving an application for impleadment, the Court also has an inherent power under Order 1 Rule 10, to direct impleadment whenever it believes that it will subserve justice for present of a particular party to be brought on record and for an adjudication to be done in the presence of such party.

In this case, if I sustain the order of impleadment, I do so not taking the 3rd parties as necessary parties but I will accord to them the status as proper parties. Again the impleadment ought not to be understood as converting the suit for specific performance of an agreement as the suit requiring an adjudication of title. The title in defendant Nos. 1 to 4 to enter into an agreement with the plaintiff and the defendant's entitled to the property at the relevant time is an admitted fact. There have been two suits, one, brought by the 3rd parties which has fructified onto a compromise decree and the other which is at the stage of trial of suit. The adjudication now will be made inter alia on the contentions that could be taken by the impleaded parties of the circumstances that exist for not extending the discretionary relief to the

plaintiff as contemplated under Section 20 of the Specific Relief Act.

The impleadment was sought by the 3rd party on a plea that they are owners of the property having obtained the right as heirs of Karan Singh and who had also obtained the compromise decree on 20.03.2013 in a suit instituted by two of them on 06.06.2007 for declaration.

The two suits are, one, 3rd parties claiming rights through Karam Singh which independently is also the source of title for the plaintiffs' vendors. The application for impleadment according to the plaintiff has come about after the evidence of the plaintiff side was over. The impleadment shall not make possible the cross-examination of the plaintiff's witnesses already made. It shall proceed, as far as the defendants are concerned, only at the stage when they are impleaded and the plaintiff will have the benefit of cross-examination of the newly added parties when they tender their evidence and needless to state, if the plaintiff chooses to give any rebuttal evidence, the newly added parties will also have a right of cross-examination of the parties in such rebuttal evidence.

In my view, the impleadment of 3rd parties under the special circumstances that this case brings about would be appropriate and there is nothing illegal in the order for interfering with the same. The impugned order is maintained and the revision petition is disposed of.

(K.KANNAN)

JUDGE

29.02.2016

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