

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

CR No.394 of 2016

Date of decision :18.02.2016

Smt. Santosh

..... Petitioner.

Versus

Smt. Mewa and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.S.Saini, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present civil revision petition under Article 227 of the Constitution of India has been preferred against the order dated 30.10.2015 passed by the learned Civil Judge (Jr. Division), Bahadurgarh, vide which the application filed by respondent no.4 under Order 1 Rule 10 Code of Civil Procedure, 1908 (for short 'C.P.C') for impleading him as a party to the suit has been allowed.

2. Learned counsel for the petitioner contended that petitioner-plaintiff has filed the suit for specific performance of the agreement to sell dated 27.12.2004 executed by respondent no.1-Smt. Mewa. Respondent no.4. Ranvir Singh has also alleged that respondent no.1 has executed the agreement to sell dated 12.08.2006 in his favour. He contended that there was no privity of contract between the

petitioner-plaintiff and respondent no.4-Ranvir Singh.

3. He contended that a person can only be impleaded as a party to the suit, if, he is a necessary party and in his absence no decree can be passed. He further contended that in the instant case the presence of respondent no.4 is not required to decide the matter in controversy between the petitioner and respondents no.1 to 3. Thus, he was not a necessary party to the suit and the application filed by him has been wrongly allowed by the learned trial Court vide impugned order dated 30.10.2015. To support his contentions, he has relied upon cases, **Krishan Lal Vs. Tek Chand 1986 (2) PLR 616, Kasturi Vs. Iyyamperumal & Ors. 2005(2) R.C.R (Civil) 691 and Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and others 2008(10) SCC 708.**

4. He further contended that respondent no. 4 has already filed the separate suit for specific performance on the basis of the alleged agreement to sell dated 12.08.2006, wherein the petitioner has also been impleaded as a party. So, his presence is not at all necessary in the present suit.

5. I have duly considered the aforesaid contentions.

6. The facts of the present case are peculiar. Petitioner-plaintiff Smt. Santosh is the daughter of respondent no.1-Smt. Mewa, the executant of the agreement. It is alleged that Smt. Mewa has executed the agreement to sell dated 27.12.2004 in favour of the petitioner and on the basis of that

agreement she has filed the suit for specific performance against the respondent no. 1-Smt. Mewat. Respondents no. 2 and 3 are stated to be the subsequent purchaser from respondent no.1 vide sale deed dated 24.08.2007. In the application moved by respondent no.4- Ranvir Singh, he has categorically mentioned that the suit filed by petitioner is collusive between her and respondent no.1-Smt. Mewa, her mother. He has also pleaded that in the agreement to sell dated 12.08.2006 executed by respondent no.1 in his favour, petitioner-plaintiff is the attesting witness. Thus, certain peculiar circumstances/facts have cropped up in this case. Particularly keeping in view the close relationship between petitioner and the executant of the agreement to sell.

7. In case **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd and others 2013(2) R.C.R (Civil) 875**, the Hon'ble Apex Court has laid down as under:-

“22. In the case of Vidhur Impex (supra), the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Paragraph 36 is worth to be quoted hereinbelow:

“Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad

principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.
2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.
3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.
5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

8. It was further laid down as under:-

“28. From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.”

As per the aforesaid ratio of law laid down by the

Hon'ble Apex Court, 'a proper party is the person whose

presence would enable the Court to completely, effectively and properly adjudicate upon all the matters and issues, though he may not be a person in favour of or against whom a decree is to be made'. So, even if no relief is claimed against a person but, if his presence would enable the Court to completely, effectively and properly adjudicate upon all the matters involved in the suit, he will be considered to be a proper party and got impleaded as a defendant in the suit.

9. In the instant case also respondent no.4-Ranvir Singh has raised certain issues which requires his presence to enable the Court to completely, effectively and properly adjudicate upon all the matters in issue. Though, no relief has been claimed in the suit against him. But, certainly his rights are likely to be effected from the decision of the suit as he is also seeking the specific performance of the agreement to sell dated 12.08.2006 executed by respondent no.1 in his favour with respect to the same land. The cases relied upon by learned counsel for the petitioner can be of no help to him in view of the authoritatively pronouncement of the Hon'ble Apex Court in **Thomson's case (Supra)**, wherein the Hon'ble Apex Court has exhaustively dealt with the interpretation and applicability of Order 1 Rule 10 CPC.

10. Consequently, no fault can be found with the discretion exercised by the learned trial Court to allow the application filed by respondent no.4 for impleading him as a

party to the suit.

11. It has been pointed out during the course of arguments that respondent no. 4-Ranvir Singh has also filed a suit for specific performance on the basis of agreement to sell dated 12.08.2006, wherein he has impleaded the present petitioner as well as her mother (respondent no.1-Smt. Mewa) as a party to that suit. It is also not disputed that the same land/property is involved in both the suits. So, either of the party can make a request to the learned trial Court to consider the feasibility of consolidating both the suits in order to avoid any complication and conflicting findings

12. Thus, I do not find any illegality in the impugned order calling for interference by this Court while exercising the supervisory powers under Article 227 of the Constitution of India.

13. Resultantly, the present revision petitions having, no merits, are hereby dismissed.

18.02.2016

S.khan

(DARSHAN SINGH)
JUDGE