

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

CR No.4576 of 2016(O&M)

Date of decision:23.7.2016

Prem Harjit Singh and othersPetitioners

VERSUS

Nirmal Harjit Singh and anotherRespondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Divanshu Jain, Advocate for the petitioners.

REKHA MITTAL, J.

The present petition lays challenge to order dated 28.04.2016 passed by Additional Civil Judge (Senior Division), Chandigarh, whereby application filed by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for brevity 'CPC') for impleading them as defendants in suit titled Hari Krishan Vs. Nirmal Harjit Singh for possession by way of specific performance of agreement of sale dated 28.09.2004 in regard to house No.347, Sector 21-A, Chandigarh has been dismissed.

Hari Krishan-respondent No.2, filed a suit for possession by way of specific performance of agreement on the plea that respondent No.1/defendant agreed to sell suit house for a total sale consideration of Rs.1,05,00,000/- and received Rs.22,00,000/- towards earnest money. In the alternative, prayer for recovery towards refund of earnest money, liquidated charges, loss suffered for breach of the agreement was made.

The petitioners (siblings of Nirmal Harjit Singh) filed the instant application for being impleaded as a party on the array of

defendants on the premise that Nirmal Harjit Singh is co-owner in the suit property only to the extent of 1/4th share (25%) and the remaining 75% to the extent of 1/3rd share each is co-owned by Prem Harjit Singh, Surjit Kaur and children of Gurdev Kaur and thus the applicants being co-owners of the suit property are required to be impleaded as a party for complete and effective adjudication of all the disputed questions in controversy.

The learned trial Court after filing of reply by respondent/plaintiff and having heard counsel for the parties dismissed the application with the observations that third party to the agreement to sell claiming independent right and title over the property subject matter of the agreement is clearly not a necessary party in a suit for specific performance of the agreement to sell. Rather, in case the applicants are ordered to be impleaded as defendants in the instant case, same shall change entire nature of the suit and convert the instant suit to a title suit which is clearly not permissible. The Court relied upon judgment of Hon'ble the Supreme Court Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and others, 2010 (7) SCC 417, and refused to rely upon judgment of Hon'ble the Apex Court in Sumtibai and others vs. Paras Finance Co. and others, 2007(4) R.C.R. (Civil) 524 and judgment of Bombay High Court Jaiprakash Shankarrao Pisal Vs. Shri Vilas Ganpat Dongre and others, 1985(1) BCR 657 pressed in to service by counsel for the petitioners/applicants.

Counsel for the petitioners has submitted that as Nirmal Harjit Singh (respondent/defendant) is not absolute owner of the suit property that is co-owned by the applicants to the extent of shares detailed in the application, the learned trial Court has wrongly relied upon the judgment

in Mumbai International Airport Pvt. Ltd.'s case (supra) to reject their application for being impleaded as co-defendants. It is further argued that judgment in Mumbai International Airport Pvt. Ltd.'s case (supra) was rendered by Hon'ble the Apex Court in the context of different facts and circumstances, therefore, has no bearing on the case at hand. It is further argued that in similar set of circumstances, this Court has allowed the petition filed by a party to challenge an order passed by the Civil Judge (Senior Division), Hisar whereby an application filed by Ranjit Singh – petitioner under Order 1 Rule 10 CPC for impleading him as a party in a suit for specific performance of the agreement purported to be executed by the plaintiff/respondent was allowed and the order passed by the trial Court was set aside. For this purpose, reference has been made to judgment Ranjit Singh Vs. Ashok Kumar Jain and others, 2016(1) PLR 460.

I have heard counsel for the petitioners, perused the paper-book particularly plaint of the suit filed by Sh. Hari Krishan – respondent No.2 against Nirmal Harjit Singh – respondent No.1, the application under Order 1 Rule 10 CPC filed by the petitioners and impugned order (Annexure P-13).

The controversy raised in the present petition does not require any serious consideration much less detailed one in view of the authoritative pronouncement of Hon'ble the Supreme Court of India Kasturi Vs. Iyyamperumal, 2005(2) RCR (Civil) 691. In the said case, the only question posed for answer was whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract claiming to have an independent title and possession over the contracted property, is

entitled to be entered as a party defendant in the said suit by invoking Order 1 Rule 10 CPC. A relevant extract from paras 14 to 18 of the judgment is quoted herein-below for ready reference:-

“14. As discussed hereinafter, whether respondent Nos.1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of respondent Nos.1 and 4 to 11 before the Court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos.2 and 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. It is an admitted position that the respondent Nos.1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of **Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors., 1996(10) SCC, 53**, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the respondent Nos.2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos.1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific

performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos.1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, the respondent Nos.1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

16. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would not be open to the Court to decide the question of possession of a third party/ or a stranger as first the lis to be decided is the enforceability of the contract

entered into between the appellant and the respondent No. 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In **Amol v. Rasheed Tuck and Sons Ltd. [1956(1) All Eng.Reporter, 273]** it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will effect him legally.

17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

18. The learned counsel appearing for the respondent Nos.1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos.1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of respondent Nos.1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinafter, including the scope of the suit, we are of the view that it lacks merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because the respondent Nos.1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief

against the respondent No.3 to the contract. In our view, the third party to the agreement for sale without challenging the title of the respondent No.3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.”

When the facts and circumstances of the present case are examined in the light of enunciation laid down in Kasturi's case (supra), I find myself unable to accept the submissions made by counsel for the petitioners that they are entitled to be impleaded as a party in the suit by relying upon judgment of this Court in Ranjit Singh's case (supra). Counsel for the petitioners has failed to cite any precedent contrary to what has been held by Hon'ble the Apex Court in Kasturi's case (supra). The judgment in Sumtibai and others' case (supra) was decided by a two Judge Bench whereas Kasturi's case (supra) was decided by a three Judge Bench. This apart, 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. Under these circumstances, the trial Court has rightly did not rely upon the judgment in Sumtibai and others' case (supra) in favour of the petitioners.

In view of the above, I find myself unable to be persuaded with the submissions made by counsel for the petitioners that the order passed by the trial Court suffers from any error much less illegality as would call for intervention in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. No order as to costs.

JULY 23, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no