

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

CR No.4938 of 2014(O&M)

Date of decision:23.8.2016

Sheela Devi

....Petitioner

VERSUS

Suman and others

.....Respondents

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

Present: Mr. Parminder Singh, Advocate for the petitioner.

 Mr. J.P. Sharma, Advocate for respondents No.1 and 2.

 Mr. Sandeep Goyal, Advocate for respondent No.3.

REKHA MITTAL, J.

By invoking Article 227 of Constitution of India, the present petition lays challenge against order dated 03.07.2014 (Annexure P-5) whereby application filed by the defendants/respondents No.1 and 2 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleading Bala Ram – respondent No.3 as a party on the array of defendants has been allowed.

Counsel for the petitioner contends that a suit for mandatory injunction has been filed by the petitioner on the premise that she is the registered owner of 100 square yards house purchased vide vasika No.2497/1 dated 28.05.2004 for a consideration of Rs.60,000/-. Sham Lal – respondent No.2 is her real brother and Suman is wife of Sham Lal and as they had no accommodation to live and wanted to construct a house by purchasing some plot near to the house of the petitioner, the house in question was given to them on license for a period of one year. On expiry

of one year, the respondents failed to hand over vacant possession of the house and the petitioner filed the suit for mandatory injunction directing them to hand over vacant possession of the house. It is further argued that in the written statement filed by respondents No.1 and 2, they have raised a plea that the petitioner sold the suit house through agreement to Bala Ram for a consideration of Rs.1,50,000/- and Bala Ram further sold the house for a consideration of Rs.1,70,000/- vide full and final payment agreement dated 06.01.2011.

It is further argued that the instant application was filed by respondents No.1 and 2 for impleading Bala Ram as a party that has been wrongly and illegally allowed by the Court. It is argued with vehemence that as the petitioner has not claimed any relief against Sh. Bala Ram nor he is a proper much less necessary party for complete and effective adjudication of the real dispute between the parties, the order impugned is liable to be set aside.

Counsel for the respondents have supported the impugned order with the submissions that as remedy of revision under Section 115 CPC is available, petition under Article 227 of the Constitution of India is not maintainable. For this purpose, reference has been made to judgment of this Court Sandeep Singh and another vs. Baljit Singh and others, 2014(5) RCR (Civil) 238. Counsel has further submitted that this Court in Jagjit Singh vs. Charanjit Singh and another, 2014(3) RCR (Civil) 40, has laid down the principles for impleadment of a proper or necessary party and the trial Court has rightly held that Bala Ram son of Anant Ram is a necessary party and requires to be impleaded on the array of defendants.

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

Concededly, the petitioner has filed a suit for mandatory injunction directing respondents No.1 and 2 to hand over vacant possession of the suit house as they were permitted to use the property in question as licensees being brother and bhabhi of the petitioner. In the written statement, they have raised a plea that they are in possession of the suit house under an agreement of sale purported to be executed by Sh. Bala Ram son of Anant Ram. The petitioner has not claimed any relief against said Bala Ram. The mere fact that respondents No.1 and 2 have alleged an agreement of sale in favour of Bala Ram purported to be executed by the petitioner does not render Bala Ram a proper much less necessary party by invoking the provisions of Rule 10 of Order 1 CPC. Bala Ram, at best, may be examined by respondents No.1 and 2 to substantiate their claim that possession of the suit house was delivered by the petitioner to Bala Ram on the basis of an agreement to sell and later Bala Ram delivered possession of the suit house to the respondents on the basis of agreement to sell, set up by them. In this view of the matter, I find merit in contention of the petitioner that Sh. Bala Ram is neither a necessary nor a proper party for complete and effective adjudication of the matter in controversy.

There cannot be any dispute about the position in law laid down in Jagjit Singh's case (supra) but when the facts and circumstances of the present case are examined in the light of relevant provisions of CPC and the principles reiterated in Jagjit Singh's case (supra), claim of the respondents appears to be misconceived and thus untenable.

To be fair to the respondents, counsel has relied upon judgment of this Court in Sandeep Singh's case (supra) wherein this Court has held that an order which is final for which no provision for an appeal is possible could be only subject of revision under Section 115 CPC and intervention under Article 227 would be grossly improper and a situation where the provision of CPC could still be attracted. It is further held that the Court will not take this case as an extra-ordinary situation of an order as having been passed by a Judge without jurisdiction. The appeal was not competent and the appropriate remedy would have been only under Section 115 CPC and that remedy was also not available at such a length of time. The observations aforesaid were made in the peculiar facts and circumstances of the case as the petitioner could only avail a remedy of revision for want of there being no remedy of appeal available against the order impugned. In the case at hand, no remedy of appeal is available against the impugned order, therefore, the respondents cannot derive any advantage to their contention from the referred authority.

For the foregoing reasons, the petition is allowed and the impugned order is set aside. As a consequence, Bala Ram is deleted from the array of defendants. Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

AUGUST 23, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no