

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

CR No.5423 of 2016(O&M)

Date of decision:24.8.2016

Malkiat Kaur

....Petitioner

VERSUS

Adil Mehmood and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ankit Kaushal, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 21.07.2016 passed by the Civil Judge (Junior Division), Malerkotra whereby application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleadment as a party on the array of defendants in suit titled Adil Mehmood Vs. Gafooran has been dismissed.

Counsel for the petitioner has submitted that Gafooran – respondent No.2 borrowed a sum of Rs.43,000/- and on her failure to repay the amount, the petitioner filed a suit for recovery in the year 2007 and it was decreed on 06.02.2009. In order to defeat right of the petitioner to realize the decretal amount by way of attachment and sale of property, subject matter of the suit for specific performance filed by Adil Mehmood against Gafooran, the parties to the said suit joined hands and prepared a forged and fabricated agreement to sell dated 08.04.2005. The suit for specific performance of said agreement has been filed in the year 2015 and Gafooran has opted to be ex parte.

It is argued with vehemence that the petitioner being directly interested in the property, subject matter of the suit for specific performance, she is entitled to be impleaded as a party in order to defend the suit and prove that the agreement propounded by respondent No.1 is the result of forgery and the suit is otherwise liable to be dismissed being barred by limitation. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India Sumtibai and others vs. Paras Finance Co. and others, 2007(4) R.C.R. (Civil) 524.

I have heard counsel for the petitioner, perused the paper-book and the judgment cited at bar.

The question with regard to entitlement of a stranger to the agreement to be impleaded as a party in a suit for specific performance of the agreement came up for consideration before Hon'ble the Supreme Court in Kasturi vs. Iyyamperumal, 2005(2) RCR (Civil) 691. Hon'ble the Apex Court on a detailed consideration of the matter and for the reasons recorded in paras 14 to 18 of the judgment has held that a stranger/third party to the contract cannot be added as a defendant in the suit nor respondent Nos.1 and 4 to 11 can be allowed to raise the question of title in the suit for specific performance by enlarging its scope.

The judgment in Sumtibai and others' case (supra) was decided by a two-Judge bench. In the said case, 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

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. Further held that the said decision will have no application where a third party shows some semblance or interest in the property in dispute.

In the case at hand, the petitioner is sought to be impleaded as a party by stating that the agreement has been prepared with an intent to cause wrongful loss to the petitioner in whose favour a money decree has been passed. When the facts and circumstances of the present case are examined in the light of judgment in Kasturi's case (supra), I find myself unable to accept the submissions made by counsel for the petitioner that the order impugned suffers from any illegality much less being perverse or absurd, warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

AUGUST 24, 2016

'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no