

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

**CR No.6192 of 2016(O&M)
Date of Decision- 20.09.2016**

Ajit Singh and others

... Petitioners

Versus

Kartar Singh and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sumit Gupta, Advocate for the petitioners.

RAJ MOHAN SINGH, J.

CM No.19097-CII of 2016

For the reasons mentioned in the application, the same is allowed.

Accompanying documents are taken on record.

CR No.6192 of 2016

[1]. In this revision petition, petitioners have assailed order dated 02.07.2016 passed by Additional Civil Judge (Senior Division), Bahadurgarh vide which application under Order 1 Rule 10 CPC filed by the petitioners was dismissed.

[2]. Plaintiff-respondent No.1 Kartar Singh filed a suit for specific performance with consequential relief of permanent injunction against defendant-Sube Singh/respondent No.2 in respect of plot measuring 140 sq. yard situated within the abadi of village Ballor, Tehsil Bahadurgarh, District Jhajjar.

[3]. Defendant-respondent No.2 entered into an agreement to sell with plaintiff-respondent No.1 on 10.05.2016 for a total sale consideration of Rs.3,56,000/-. Plaintiff paid an earnest amount of Rs.1,00,000/- at the time of execution of agreement to sell. Target date for execution of sale was fixed on or before 10.08.2016. Plaintiff alleged non-compliance of the agreement on behalf of defendant and the suit was filed.

[4]. Defendant-respondent No.2 contested the suit. Execution of agreement to sell was denied altogether. Payment of earnest money and fixation of target date for execution of sale deed were also denied.

[5]. Petitioners namely Ajit Singh, Kusum Yadav and Rattan Lal filed an application under Order 1 Rule 10 read with Section 151 CPC for becoming a party-defendants in the suit on the ground that the suit property was part and partial of plot No.129 and was ancestral property of Khem Chand son of Patram, which was succeeded by him from his father Patram. After the death of Khem Chand son of Patram, his share in the plot No.129 was succeeded by Smt. Rama widow, Rattan Lal, Ajit Singh, Sube Singh @ Subhag Chand, Sewa Singh sons of Khem Chand and Smt. Kusum, Rachna daughters of Lali daughter of Khem Chand. Suit property was claimed to be owned and possessed by applicants namely

Ajit Singh, Kusum Yadav and Rattan Lal as per their respective shares.

[6]. Applicants claimed that they have every right, title and interest in the suit property and therefore, they were necessary parties to the suit.

[7]. The said application was opposed by the plaintiff-respondent No.1. Trial Court dismissed the application vide order dated 02.07.2016. That is, how, the present revision petition came to be filed.

[8]. I have heard learned counsel for the petitioners.

[9]. Apparently a suit for specific performance was filed by plaintiff-respondent No.1 in respect of 140 sq yard plot No.129 comprised in khewat No.80min/63, khatoni No.122 min situated within the *abadi deh* of village. The suit property was ancestral property wherein applicants were also co-sharers. Being co-sharers, the applicants claimed that they had all the rights and were necessary parties to the suit. The impleading of the applicants as party-defendants would definitely facilitate the Court in deciding the controversy in a more effective manner.

[10]. Plaintiff's contest was on the ground that though the suit property was plot No.129, but the same was not an ancestral property. The applicants had no concern with the

suit land. In fact, the properties were partitioned between the co-shares about 20 years ago. The suit property came to the share of defendant who had executed agreement to sell in respect thereof in favour of the plaintiff. The suit property was situated in the old *abadi* of the village and it did not bear any khasra number. The suit property did not belong to the applicants. The claim of the applicants was denied altogether.

[11]. As per averments made in the plaint, there was no mention about plot number comprising in khewat or khatoni, rather dimensions have been mentioned viz-a-viz the boundaries. The suit property was situated in old *abadi* of the village and the same did not bear any khasra number. Even if, the property was presumed to be the same as alleged by the applicants-petitioners, then also the property would be joint property to the parties in the revenue record. As per agreement to sell, plot measuring 140 sq. yards was agreed to be sold by the defendant. The area would be deemed to be the proposed sale of share of defendant and not the exact specific portion. Every co-sharer would be deemed to be in possession of every inch of joint land till the land is partitioned by metes and bounds. Even a sale of specific khasra number out of joint land would be deemed to be a sale of share in view of law laid down by this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204 (Full Bench)**.

[12]. Considering the controversy in the light of aforesaid facts, I do not incline to interfere in the impugned order dated 02.07.2016 passed by Additional Civil Judge (Senior Division), Bahadurgarh as there is no illegality or error of jurisdiction in the impugned order. Resultantly, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

20.09.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No