

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

CR No. 6702 of 2013

Date of decision :27.04.2016

Teja Singh

..... Petitioner

Versus

Pritam Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rajesh Kumar, Advocate
for the petitioner.

None for respondents no.1 to 4.

Mr. A.S.Khinda, Advocate
for respondents no.5 to 7.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 16.09.2013 passed by the learned Civil Judge (Junior Division), Kapurthala, vide which the application filed by respondents no.5 to 7 under Order 1 Rule 10 Code of Civil Procedure, 1908 (for short CPC), for impleading them as defendants, has been allowed.

2. Learned counsel for the petitioner contended that the petitioner was *dominus litis*. So, he cannot be compelled to

fight against respondents no.5 to 7 against whom he does not wish to fight. The petitioner has also not claimed any relief against them. So, they should not have been impleaded as party to the suit by the learned trial Court. He contended that the subsequent purchaser during the pendency of the suit is not entitled to be impleaded as party to the suit. He contended that respondents no. 5 to 7 have claimed themselves to be purchaser of the property. There is no dispute with regard to the title or ownership of the property. Thus, their participation in the suit was not necessary. They have to prove their title independently on the basis of the documents in their possession. He further contended that the sale deed in favour of respondents no. 5 to 7 is a result of fraud and criminal proceedings have already been initiated against them for procuring the false and fabricated sale deed. The petitioner is claiming the permanent injunction only against respondents no. 1 to 4 due to their illegal interference in the suit property. Thus, he contended that respondents no. 5 to 7 were not the necessary or proper party to the suit. Therefore, he contended that the impugned order suffers from material illegality and is liable to be set aside. To prove this contentions, he relied upon cases **Mustak Ahmed Vs. Shamlat Patti Sikhan 1992 PLJ 665, Major P.T. Choudary Vs. Mohammed Abdul Basheer Khan and others 2007(5) R.C.R (Civil) 144, Amar Singh Vs. Gram Panchayat, Sabun, 1992 PLJ 69, Ranbir Singh**

and another Vs. Ran Singh and others 2006(2) R.C.R (Civil) 278, Sarvinder Singh Vs. Dalip Singh & Ors. 1996(5) SCC 539, Antony Devaraj Vs. Aralvaimozhi (Kurusadi) Devasahayam 2004(3) R.C.R (Civil) 68 and Piara Singh & another Vs. Sri Guru Arjan Dev College, Tarn Taran 2003(4) R.C.R (Civil) 532.

3. On the other hand, learned counsel for the respondents no. 5 to 7 contended that respondents have purchased the suit property during the pendency of the suit. They are the bonafide purchasers of the suit property. Respondents no. 1 to 4 are not contesting the suit and have been proceeded against ex-parte. He contended that if the decree is passed, the rights of the respondents no. 5 to 7 are certainly to be affected. The applicants have become owner in possession of the suit property and have got direct interest in the suit land. So, they have been rightly impleaded as party to the suit by the learned trial Court. To support his contentions, he relied upon case **Gopal Singh Vs. Raghbir Singh and another 2010(4) R.C.R (Civil) 723.**

4. I have duly considered the aforesaid contentions.

5. Annexure P-2 is the application filed by respondents no.5 to 7 under Order 1 Rule 10 CPC for impleading them as defendant to the suit. In the application, it has been specifically pleaded that defendants no. 1 to 4 without disclosing about the pendency of the litigation have sold the

suit land in their favour vide registered sale deed dated 25.04.2012 for valuable consideration and put them in actual possession thereof. After the sale deed, the interest of defendants no. 1 to 4 in the suit came to an end, they did not appear before the Court. It is further pleaded that as they have become the owners in possession of the suit property, so, they had got direct interest in the suit property.

6. This fact is not disputed that original defendants i.e. respondents no. 1 to 4 are no more contesting the suit, which is evident from the copy of the impugned order, wherein they have been recorded as ex-parte. Respondents no.5 to 7 are the subsequent purchasers during the pendency of the suit. There is no dispute that the plaintiff being *dominus litis* may chose persons against whom he wishes to litigate. But, this general rule is subject to the provisions of Order 1 Rule 10 (2) CPC, which provides for impleadment of proper or necessary party at any stage or proceedings, either upon or even without any application on such terms as may appear to the Court to be just. The Court can direct to add any person as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. Thus, the Court has the discretion to add any person has a party to the suit, who is found to be a necessary or proper party. To support this view, reference can be made to case

Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. 2010(4) R.C.R (Civil) 551. In view of this judgment of the Hon'ble Apex Court, cases relied upon by learned counsel for the petitioner titled as **Mustak Ahmed Vs. Shamlat Patti Sikhan (Supra)** and **Ranbir Singh and another Vs. Ran Singh and others (Supra)** are of no help to the petitioner.

7. A necessary party is the person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, but is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit. Though, he need not be a person in favour or against whom the decree is to be made. Again reference can be made to case **Mumbai International Airport Pvt. Ltd' (Supra)**. Thus, the plea raised by learned counsel for the petitioner that as no relief was claimed against respondents no. 5 to 7, they cannot be impleaded as party to the suit has no substance, because as per the plea raised by them in the application, they have purchased the suit property during the pendency of the suit vide registered sale deed dated 25.04.2012. It is alleged that they were put in possession of the suit property and had become owner in possession

thereof. The plaintiff-petitioner has filed the suit for injunction restraining the defendants, their agents servants etc. from interfering or taking the forcible possession of the suit land illegally, forcibly or in any manner whatsoever. As respondents no. 5 to 7 have purchased the suit property during the pendency of the suit and particularly when original defendants are not contesting the suit and have been proceeded as ex parte, the presence of respondents no. 5 to 7 is necessary in order to enable the Court to completely, effectually and adequately to adjudicate upon all the matters in dispute in the suit.

8. There is no hard and fast rule that the subsequent purchaser during the pendency of the suit can never be impleaded as a party to the suit. The Hon'ble Apex Court in case **Savitri Devi Vs. District Judge, Gorakhpur and others 1999 AIR (SC) 976**, held that subsequent purchasers are necessary and proper parties. In view of this later view of the Hon'ble Apex Court, case **Sarvinder Singh Vs. Dalip Singh & Ors. (Supra)** relied upon by learned counsel for the petitioner is also of no help to him. This Court in case **Gopal Singh Vs. Raghbir Singh and another (Supra)** has also laid down that transferee is a necessary party to the suit. That was also a suit for permanent injunction. Defendants have sold the suit property during the pendency of the suit. It was observed by this Court that as the defendants have sold the suit property

during the pendency of the suit they may or may not defend the suit properly, so the applicants were necessary party to the suit. The case in hand is even on better footing as the defendants have already been proceeded against ex-parte and there is no one to contest the suit except respondents no.5 to 7 to protect their rights as the decision of the suit will have direct effect on their rights.

9. Consequently, I do not find any illegality in the impugned order passed by the learned trial Court.

10. Thus, the present revision petition having no merits, is hereby dismissed.

27.04.2016

S.khan

(DARSHAN SINGH)
JUDGE