

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 86 of 2013
Date of decision : May 4, 2016

Jasbir Kaur

..... Petitioner

Versus

Leela Devi and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Gautam, Advocate
for the petitioner.

Mr. N. S. Dadwal, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the impugned order whereby application moved by Gurpreet Singh under Order 1 Rule 10 CPC has been allowed.

Learned counsel appearing on behalf of the petitioner submits that the suit has been filed seeking specific performance of agreement to sell dated 17.2.2006 directing the respondent No.1 to execute and register sale deed in favour of the petitioner in respect of one house measuring 176-2/3 sq.yards when the suit was slated for plaintiff's evidence. The application was moved by Gurpreet Singh claiming ownership in the aforementioned property and alleging therein that the sale deed dated 2.12.2005

executed in favour of Leela Devi was outcome of fraud and misrepresentation. The trial court relying upon the aforementioned factum and also the fact that in a suit filed by Gurpreet Singh against Leela Devi and another challenging the sale deed in civil suit No. 213/ 19.8.2006 the petitioner-plaintiff had also moved application Order 1 Rule 10 and the said application has been dismissed which is evident from the judgment and decree dated 29.4.2013. Copy of the same has been shown to the Court during the course of arguments.

He further submits that plaintiff in a suit for specific performance against petitioner-plaintiff is Dominus litus. No relief has been sought against Gurpreet Singh, much less there is no privity of contract. In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co.& others 2008 (3) RCR (Civil) 57.**

Learned counsel appearing on behalf of the respondents submits that judgment and decree dated 29.4.2013 dismissing the suit filed by Gurpreet Singh is under challenge as the appeal before the lower appellate court is pending adjudication and therefore, it has not attained finality. Moreover, the petitioner-plaintiff would be prevented from third party objections, in case he succeeds in obtaining judgment and decree, thus urges this Court for affirming the impugned order.

I have heard learned counsel for the parties, appraised the paper book and of the view that in a suit for specific

performance, third party to the contract, cannot be added as a party so as to convert the suit for specific performance into a suit for title. This view is laid down by the Hon'ble Supreme Court in **Bharat Karsondas Thakkar's case (supra)** and **Kasturi Vs. Iyyamperumal and others 2005 (2) CCC 379 SC.**

It is a matter of record that the trial court was swayed away from the fact that petitioner-plaintiff has also filed the application under Order 1 Rule 10 CPC in the aforementioned civil suit No. 213/19.8.2006 and the same was dismissed as is evident from the Memo of Parties of the civil suit No. 213/19.8.2006, therefore following the same parameters the said application filed by Gurpreet Singh in the present suit ought not to have been allowed.

In view of the aforementioned facts, the impugned order under challenge is set aside.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

May 4, 2016
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