

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

**CR No.8045 of 2014
Decided on: 22.10.2016**

Sukhdev Singh

....Petitioner

Versus

Joginder Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kailash Chander, Advocate
for the petitioner.

Mr. M.K. Dogra, Advocate
for respondents No.1 and 2.

REKHA MITTAL, J.

The present petition directs challenge against order dated 29.08.2014 passed by the Additional Civil Judge (Sr. Division) Amritsar, whereby application filed by the petitioner for impleading him as a party has been dismissed.

Joginder Singh and Harjinder Singh – respondents No.1 and 2 have filed a suit for specific performance of agreement to sell dated 31.12.2005 in respect of land measuring 9 kanals 10 marlas detailed in headnote of the plaint. As per the allegations, Ajit Singh entered into agreement to sell dated 31.12.2005 in respect of the suit land and agreed to execute the sale deed in view of the terms and conditions settled between the parties.

In the said suit, Sukhdev Singh – petitioner filed the application under order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (in short 'CPC') on the premise that he has already purchased the property vide registered sale deed dated 29.12.1989 and

as such, he is required to be impleaded as a party to protect his right in the property.

After filing of response by the respondents/plaintiffs and having heard counsel for the parties, the learned trial Court dismissed the application in view of its findings recorded in the concluding para of the impugned order whereby the Court has held that consequent upon purchase of land measuring 4 kanals out of total land, applicant has become only co-sharer in the total land and it is well settled preposition of law that a co-sharer is not a necessary party to a suit for specific performance of agreement to sell in respect of some portion of joint land by one of the co-sharers.

Counsel for the petitioner has not disputed the factual observations recorded in the concluding para of the impugned order whereby it has been noticed that agreement to sell dated 31.12.2005 set up by the plaintiffs pertains to land measuring 2 kanals 10 marlas and the petitioner has purchased 4 kanals of land out of total land comprising Khasra No.18/2 and 13/1, therefore, the petitioner has merely become a co-sharer in the total land out of which 2 kanal 10 marls was allegedly agreed to be sold in favour of the respondents/plaintiffs by Ajit Singh son of Sadhu Singh.

When the facts and circumstances of the present case are examined in the light of judgments of Hon'ble the Supreme Court of India ***“Kasturi vs Iyyamperumal and others”***, 2005(2) RCR (Civil) 691 and ***“Bharat Karsondas Thakkar vs M/s Kiran Construction Co. & Others”***, 2008(3) RCR (Civil) 57, I do not find any error much less illegality in the impugned order warranting intervention.

In ***Bharat Karsondas Thakkar's case (supra)*** Hon'ble the Apex Court by relying upon the earlier judgment in ***Kasturi's case (supra)*** has held that the relevant provisions of Section 15 of the Specific Relief Act, 1963 with which their Lordships are concerned is contained in Clause (A) herein entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and therefore, does not fall within the category of '*parties to the agreement*'. The appellant also does not come within the ambit of Section 19 of the said Act which provides for relief against parties and person claiming under them by subsequent title. This aspect of the matter has been dealt with in detail in ***Kasturi's case (supra)*** by holding that scope of suit for specific performance could not be enlarged to convert the same into a suit for title and possession. Their Lordships observed that a third party or a stranger to the contract could not be added so as to convert a suit of one character into a suit of a different character.

For the reasons aforesaid, finding no merit, the petition fails and is accordingly dismissed.

22.10.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No