

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.1944 of 2016

Date of decision:17.7.2017

Harwinder Singh

...Petitioner

Versus

Satbir Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Deepak Bhardwaj, Advocate for the petitioner.
Mr.Amrik Singh, Advocate for respondent No.1.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 27.1.2016 passed by the learned trial court, whereby his application under Order 1 Rule 10 of the Code of Civil Procedure ('CPC' for short) was dismissed, petitioner has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that after having entered into an agreement to sell with respondent No.2, petitioner has already filed a suit for possession by way of specific performance of agreement to sell dated 26.12.2011 at Annexure P-1, impleading respondent No.1 as defendant No.2. Under this undisputed fact, which is born on the record, learned trial court ought to have allowed the application of the petitioner under Order 1

Rule 10 CPC in the suit filed by respondent No.1 against respondent No.2. However, since the learned trial court failed to appreciate the above-said material aspect of the matter, while passing the impugned order, it cannot be sustained to the extent application of the petitioner under Order 1 Rule 10 CPC was dismissed.

During the course of hearing, learned counsel for respondent No.1 could not raise any meaningful argument in support of the impugned order and rightly so, it being a matter of record, because no such argument is available with him. Further, learned counsel for respondent No.1 could not point out as to what prejudice was likely to be caused to respondent No.1 by impleading the petitioner as one of the defendants.

Under these undisputed facts and circumstances of the case, this Court is of the considered opinion that the learned trial court misdirected itself, while dismissing the application of the petitioner and the impugned order cannot be sustained to this extent.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained.

Accordingly, the impugned order dated 27.1.2016 (Annexure P-6) is hereby set aside to the extent it has dismissed the application of the petitioner under Order 1 Rule 10 CPC. Consequently, the application moved by the petitioner under Order 1 Rule 10 CPC stands allowed and he would be impleaded as defendant in the suit filed by respondent No.1. He

shall be permitted to file the written statement. Thereafter, the learned trial court shall proceed further with the suit to decide the same, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

17.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No