

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 4748 of 2017

Date of decision : 09.10.2017

Harvinder Singh

.....Petitioner(s)

Versus

Jaswant Kaur and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 24.05.2017
(Annexure P-5) vide which the lower Court has consolidated two suits.

I have heard the counsel for the petitioner at great length.

The petitioner had placed on record the copy of the plaint of the
suit filed by him as well as the copy of the plaint filed by Neeta Dhody.

Harvinder Singh had filed a suit in 2012 for specific
performance of agreement dated 14.11.2011 which was with respect to plot
No.278-F. The suit was filed against Jaswant Kaur. Jaswant Kaur filed the
written statement and disclosed certain facts and thereafter Jaswant Kaur's
daughter Neeta Dhody was impleaded as a party. Neeta Dhody had set up a
document dated 19.12.2011 which was executed in her favour.

Subsequently Neeta Dhody filed a suit in November 2014 arraying her mother, Harvinder Singh and her brother Inderbir Singh as defendants. Her plea was that the agreement dated 14.11.2011 entered into by her mother was illegal, null and void and she was the exclusive owner of the property on the basis of the sale deed dated 19.12.2011 and she was seeking possession of the house and also claimed damages for use and occupation and injunction restraining the defendants from alienating the property.

Subsequently an application was filed on behalf of Neeta Dhody that as the two suits pertained to the same agreement and the sale deed, it would be appropriate to consolidate both the cases making one of them as a lead case as it would avoid conflicting judgments and multiplicity of proceedings.

The request was opposed. The lower Court on hearing both the sides allowed the application and consolidated the two suits and the suit filed by the petitioner was treated as the main case. Thereafter, fresh issues were framed.

The counsel for the petitioner urges that the suits could not have been consolidated as the parties substantially were not the same and Inderbir Singh was not a party in the suit filed by him and the parties have to be same only then the suits can be consolidated and the relief claimed are different and there is no similarity of issues and his fear is that Inderbir Singh is colliding and all of them would lead separate evidence. Counsel has placed reliance upon ***Brij Kishore Vs. Bir Singh and others, CR No.5922 of 2013, DOD 30.09.2013 (P&H)*** and ***Anurag And Co. and another Vs. Addl. Distt. Judge and ors., AIR 2006 Raj 119 (Rajasthan)***.

On a query, the counsel for the petitioner states that he has taken the plea of collusion between the parties. This aspect has to be dealt with by the trial Court and not in these proceedings.

A perusal of both the complaints would show that it is the agreement to sell and the sale deed which are in issue in both the cases. The main parties are the same and the suit has been consolidated in the first suit which had been filed by the petitioner. The lower Court has framed the issues afresh. The parties substantially are the same. The burden of proof of facts in issues will be on the party who alleges or sets up a document. The consolidation would eliminate the chances of conflicting judgments. There is no infirmity in the order.

The petition is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

09.10.2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No