

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

**CR No.5313 of 2015(O&M)**

**Date of decision: 7.12.2017**

Nek Singh

.....Petitioner

VERSUS

M/s Solitaire Colonisers and Builders Pvt. Ltd.

.....Respondent

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. S.K. Bawa, Advocate for the petitioner.

Mr. P.S. Miglani, Advocate for the respondent.

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**REKHA MITTAL, J. (Oral)**

The present petition directs challenge against order dated 30.04.2015 passed by the Civil Judge (Junior Division), Ludhiana whereby application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleading Sewadar Singh as a party has been allowed while disposing of joint application under Order 1 Rule 10 and Order 6 Rule 17 CPC.

Counsel for the petitioner has submitted that the respondent/plaintiff filed a suit for specific performance of agreement to sell dated 02.02.2005 purported to be executed by the petitioner/defendant in favour of the plaintiff for sale of land, detailed in head-note of the plaint. The petitioner filed the written statement in December 2006 and it was pleaded that the land in dispute had already been sold to Sewadar Singh vide sale deed dated 09.01.2006. The respondent/plaintiff filed the instant

application (Annexure P-3) in the year 2014 for impleadment of Sewadar Singh as a party and consequential amendment of the plaint under Order 6 Rule 17 CPC. It is argued with vehemence that by way of the proposed amendment detailed in sub-para (B) of para 2 of the application, the respondent sought to challenge the sale deed dated 09.01.2006 almost 10 years after gaining knowledge of the said sale deed on the basis of averments made in the written statement, therefore, plea of the respondent/plaintiff to challenge the said sale deed is clearly barred by limitation. It is further argued that in case the respondent/plaintiff is allowed to amend the plaint in order to challenge the sale deed dated 09.01.2006, it would amount to allowing the respondent/plaintiff to introduce time-barred claim resulting in serious prejudice to the petitioner for which cost is not the remedy.

Counsel representing the respondent/plaintiff, on the contrary, would urge that though the respondent/plaintiff filed a joint application for impleadment of Sewadar Singh as a party and amendment of the plaint but the Court has only allowed impleadment of Sewadar Singh as a party by allowing the application under Order 1 Rule 10 CPC, therefore, contention of the petitioner with regard to Court having allowed amendment of the plaint is misconceived and liable to be rejected.

I have heard counsel for the parties, perused the paper-book particularly the application (Annexure P-3), reply thereto (Annexure P-4) and the order impugned (Annexure P-5).

No doubt, the respondent/plaintiff filed the instant application under Order 1 Rule 10 CPC for impleadment of Sewadar Singh as a party and also sought consequential amendment of the plaint under Order 6 Rule

17 CPC. However, perusal of the impugned order particularly its concluding para leaves no manner of doubt that the Court has only allowed application under Order 1 Rule 10 CPC for impleadment of Sewadar Singh as a necessary party on the basis whereof, case has been fixed for filing of amended title and amended plaint. As the trial Court has not adverted to the question of entitlement of the respondent/plaintiff to seek amendment of the plaint, the mere fact that the Court has made an order for filing of amended title and amended plaint cannot be construed in favour of the respondent/plaintiff that his request for amendment of the plaint has also been allowed.

So far as impleadment of Sewadar Singh as a party is concerned, admittedly, the suit property already stands transferred by the petitioner/defendant in favour of Sewadar Singh vide sale deed dated 09.01.2006. Unless and until Sewadar Singh is impleaded as a party, plea of the respondent/plaintiff seeking specific performance of the agreement to sell cannot be allowed even if otherwise found meritorious. In this view of the matter, I do not find any error much less illegality in allowing Sewadar Singh to be impleaded as a party on the array of defendants.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, in case the respondent/plaintiff while filing the amended title and amended plaint also add the averments, sought to be added by way of amendment under Order 6 Rule 17 CPC, the petitioner would be at liberty to raise an issue in this regard before the Court below and the same shall be decided by the trial Court after hearing the parties in accordance with law. Any party feeling aggrieved against the said order

shall be at liberty to take recourse to appropriate remedy, in accordance with law.

**DECEMBER 7, 2017**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no