

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

C.R. No.6503 of 2015

Date of Decision: 05.05.2017

Pawan Kumar

....Petitioner

Versus

Tarsem Kataria and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Naresh Kumar Manchanda, Advocate
for the petitioner.

Mr. S.K. Arora, Advocate
for respondents No.1 to 3.

None for respondents No.4 and 5.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 14.08.2015 (Annexure P-4) passed by Civil Judge (Senior Division), Faridkot, whereby, the application filed under Order 1 Rule 10 read with Section 151 CPC for impleading the petitioner as defendant No.3 has been dismissed.

Briefly, the facts of the case are that plaintiffs-respondents No.1 to 3 filed a suit for permanent injunction against defendants-respondents No.4 and 5 restraining them from interfering or dispossessing from the peaceful possession over the land in dispute situated within the revenue estate of Faridkot.

During pendency of the suit, the petitioner filed an application under Order 1 Rule 10 read with Section 151 CPC for impleading him as defendant No.3 being a necessary party by raising certain grounds, which was dismissed vide order dated 14.08.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that while passing the impugned order of dismissal of application filed by the petitioner, the averments made in the application have not been taken into consideration. Learned counsel also submits that the petitioner is necessary party as the vendor of land of respondents No.1 to 3 had earlier executed an agreement to sell the land, in dispute and earnest money was also paid. Said Bhagwant Singh agreed to execute and register the sale deed in favour of petitioner upto 15.04.2008 after demarcation and leveling of the land in agreement but since said condition was not fulfilled, the land was sold to respondents No.1 to 3. Learned counsel further submits that the FIR was also registered against said Bhagwant Singh. The petitioner has also filed a suit for specific performance of agreement against said Bhagwant Singh as well as respondents No.1 to 3 relating to suit land, which is still pending. Learned counsel also submits that the mutation of the suit land on the basis of sale deed dated 15.04.2008 has been cancelled on the application of the petitioner upto the level of Financial Commissioner, Punjab, Chandigarh and an entry was also made in the *jamabandi* for the year 2009-10 regarding the cancellation of mutation. Said land has also been demarcated. Learned counsel further submits that impleading the petitioner as party in the suit, will help the Court to reach at just conclusion, failing which, the litigation would be multiplied.

Learned counsel for the respondents submits that the impugned order has been passed by giving detailed reasoning and finding that the petitioner is not a necessary party. Only on the basis of agreement to sell, the petitioner cannot be said to be a necessary party.

Learned counsel for the respondents has also relied upon the judgments of this Court in cases ***Santosh Sharma vs Pandit Jagdish Kumar 2015(1) ICC 517, Mohan Shyam vs Munsidhar 2010(3) ICC 432*** and ***Om Parkash and others vs Sarv Dharam Ekta Mandir Dharamshala Society and others 2010(5) Law Herald 4202***, in support of his arguments.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Facts relating to filing of suit and thereafter, moving of an application under Order 1 Rule 10 read with Section 151 CPC and dismissal thereof, are not disputed.

While dismissing the application filed by the petitioner, the following observations have been made by the trial Court :-

“ I have heard learned counsel for the parties and gone through the case file carefully. Now by way of present application, the applicant is making prayer that he be impleaded as defendant in the present suit. Perusal of the file goes on to show that plaintiffs have filed the present suit against the defendants for permanent injunction restraining them from interfering into their peaceful possession. Applicant claims that predecessor-in-interest i.e vendor of the plaintiffs had already executed an agreement to sell of the property in dispute along with other property and in order to commit fraud with the applicant, he executed sale deed in favour of the plaintiffs. As per the reply filed by the plaintiffs, it has been stated that the applicant has

already filed a suit for specific performance of the agreement in his favour. The fact has not been denied by the applicant as he has not filed any rejoinder to the reply filed by the plaintiffs. The claim of the applicant shall only be decided in the said suit as the present suit is only a simplicitor suit for permanent injunction. This Court cannot give findings in this suit on the title if the same is disputed between the plaintiffs and the applicant. Moreover, the applicant is not claiming that he is in possession of the suit property. Keeping in view the aforesaid discussion, I am of the view that applicant is not a necessary party in the present suit as far as the nature of the present suit is concerned. Consequently, application is found to be devoid of any merit and the same is hereby dismissed.”

For impleading as party in the suit, it is to be seen by the trial Court that the presence of the party, who wants himself to be impleaded, is necessary for adjudication of the matter, in dispute. It is also to be seen that such person should be impleaded as party for complete and effective adjudication of the matter in controversy.

In the present case, the petitioner is claiming to be impleaded as party defendant only on the ground that one Bhagwant Singh had entered into an agreement to sell dated 16.09.2007 in favour of the petitioner regarding part of land, in dispute, of the suit. Said agreement to sell was with the condition of getting demarcation and leveling of the land but those conditions were not fulfilled. Said agreement was cancelled by Bhagwant Singh and thereafter, the land was sold to the plaintiff-respondents No.1 to 3. The suit has been filed against the defendants for permanent injunction restraining them from interfering into peaceful possession. The petitioner has claimed his interest only on the ground that the plaintiffs had executed

an agreement to sell of the property, in dispute along with other property, whereas, the plaintiffs have stated in reply to the application that the petitioner-applicant had already filed a suit for specific performance of agreement in his favour. The claim of the petitioner will be decided in the suit filed by him, whereas, the present suit is only for permanent injunction. There is no relevancy of the petitioner being impleaded as party in the present suit in any manner. He cannot be said to be necessary party by considering the nature of the suit, in hand, and the suit filed by the petitioner.

It is well settled and has been held in various judgments that the plaintiff is the sole architect of his plan and he has a right to choose his own adversary against whom he seeks a relief. Where there are no allegations or any cause of action against the applicant, who sought to be impleaded as defendant in the suit, mere apprehension that the petitioner is necessary party in the suit, which is pending and without impleading him as party, his rights are going to be affected, is not enough to implead him as defendant in the suit.

It has been held by Hon'ble the Apex Court in case ***Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. and others*** 2010(7) SCC 417 that the plaintiff, being dominus litis, may choose persons against whom he wishes to litigate and the person, who is not a party, has no right to be impleaded against the wishes of the plaintiff. No doubt, the Court under Order 1 Rule 10(2) CPC has discretion to strike out or add parties at any stage of proceedings but the discretion under sub-rule can be exercised either suo moto or on application of person who is not party to the suit. The Court has been given the discretion to add

as a party or any person who is found to be a necessary or proper party but it is to be seen that in case, necessary party is not impleaded, the suit is liable to be dismissed. A proper/necessary party is a party, whose presence would enable the Court to completely, effectively and adequately adjudicate upon the dispute in the suit. The discretion is to be exercised, which means sound discretion guided by law and it must be governed by rule and not by humour. It must not be arbitrary, vague and fanciful but legal and regular.

In the present case, nothing has been mentioned either in the application or during arguments as to how the petitioner is a necessary party and how he is going to be affected in any manner, if not impleaded as party. It is also not the case of the petitioner that without his being impleaded as party, the result of the suit is likely to be changed.

Accordingly, keeping in view the totality of facts and circumstances of the case as mentioned above, the application filed under Order 1 Rule 10 CPC has rightly been dismissed by the trial Court. The impugned order is well reasoned and has been passed by taking into consideration all dimensions of the suit. Hence, no ground is made out to interfere with the impugned order and the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

05.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes