

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

CR No.7135 of 2017(O&M)

Date of decision: 10.11.2017

Sukhdev Singh Khaira and anotherPetitioners

VERSUS

Kirpal Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amar Vivek, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 27.04.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Ludhiana whereby application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 (in short 'CPC') for deleting names of the petitioners from the array of defendants has been dismissed.

Counsel for the petitioners has submitted that Kirpal Singh and others – respondents No.1 to 4 have filed a suit for possession as owner by way of specific performance of agreement to sell dated 28.01.2000 in respect of land measuring 13½ acres out of land measuring 215 kanals 4 marlas situated in village Mattewara sub-tehsil Koom Kalan, District Ludhiana with other reliefs. The respondents have staked their claim for specific performance on the basis of agreement purported to be executed by Smt. Gurdeep Kaur Khaira – defendant No.1. It is argued with vehemence that in the agreement, there is no reference that Smt. Gurdeep Kaur was authorized by Sukhdev Singh and Charanjit Singh, her sons or they gave consent for execution of the agreement of sale on their

behalf. Further argued that as per the recitals in the agreement, Gurdeep Kaur executed agreement for herself as well as by taking responsibility (Ba Zimmewari) on behalf of Sukhdev Singh and Charanjit Singh. According to counsel, as Sukhdev Singh and Charanjit Singh are not a party to the agreement of sale, they are neither necessary nor proper party for complete and effective adjudication of the matter in controversy and their names are liable to be deleted from the array of defendants. In support of his contentions, he has referred to judgments of Hon'ble the Supreme Court of India **Kasturi vs. Uyyamperumal and others, 2005(2) RCR (Civil) 691, Bharat Karsondas Thakkar Vs. M/s Kiran Construction Co. and others, 2008 (3) RCR (Civil) 57.** Reference has also been made to judgments of the Delhi High Court **Mehar Chand Sharma Vs. Manjeet Singh Kohli and others, FAO No.514 of 2015, decided on 01.10.2015,** Andhra Pradesh High Court **Matta @ Palina Bhavani Vs. Matta Tulasi Rao, AIR 2015 Hyderabad 70,** and that of the Madras High Court **Kuppayee Vs. Thajudeen, 2012(3) MadWN (Civil) 79.**

Another submission made by counsel is that Section 15 of the Specific Relief Act, 1963 (in short 'the Act') provides that specific performance of a contract may be obtained for any party thereto and under Section 19 (a) of the Act, specific performance of a contract may be enforced against either party thereto. It is argued that as the petitioners are not a party to the agreement of sale, the respondents/plaintiffs are not entitled to seek specific performance of the agreement against the petitioners.

The third line of argument adopted by counsel is that trial Court in the impugned order has taken note of plea of the respondents/plaintiffs that there is an oral agreement to sell between them

(plaintiffs and the defendants) but no such plea with regard to oral agreement can be taken into consideration in the light of bar created under Section 91 of the Indian Evidence Act, 1872.

I have heard counsel for the petitioners, perused the paper-book particularly the order impugned but find that the instant application filed by the petitioners for deleting their names is misconceived and has rightly been rejected by the trial Court.

The petitioners have placed on record photocopy of the agreement in vernacular (Punjabi) with its translation (Annexure P-3). Perusal of the agreement would reveal that in the opening line of the document, it is mentioned, reads thus:-

"We Gurdeep Kaur widow of Dhanta Singh son of Sunder Singh and Sukhdev Singh, Charanjit Singh sons of Dhanta Singh at the responsibility of (Ba Zimmewari) Gurdeep Kaur widow of Dhanta Singh agree...."

In the middle of this document, it is recited as follows:-

"I shall be bound to complete the papers required for Registry and would be responsible for getting the registry done from my children."

At the end, in the column pertaining to seller, names of Gurdeep Kaur, Sukhdev Singh, Charanjit Singh through responsibility of Gurdeep Kaur have been mentioned, thumb marked by Gurdeep Kaur.

Counsel for the petitioners, in response to a query by the Court, has not disputed that there can be oral authorisation by an owner in favour of another to enter into a transaction for sale of the property. Taking into consideration recitals in the agreement of sale coupled with relationship between Gurdeep Kaur and the petitioners, it is difficult to accept contention of the petitioners at this stage that the agreement in question cannot be said to be executed on their behalf or the respondents

cannot seek specific performance thereof against them or their names are liable to be deleted from array of defendants.

The respondents/plaintiffs have raised a plea in concluding lines of para 1 of the plaint that defendants No.2 and 3 (petitioners herein) had also accepted terms and conditions of the agreement on telephone as they were not immediately available on the date of agreement. The implications of the abovestated plea of the respondents are required to be appreciated at the time of final adjudication in the light of evidence yet to be adduced. It would be a moot point at that stage, if any such telephonic communication amounts to oral agreement of sale or ratification of what was done by mother of the petitioners, on their behalf. I would refrain from adverting to this contention in detail as the Court should avoid examination of factual controversy on merit while deciding interlocutory issues. That being so, plea of the respondents/plaintiffs, in this regard, cannot be rejected at the threshold. This averment in the plaint may not amount to an oral agreement for sale of the property but its affect would be seen by the Court below at the time of adjudication on merits if the alleged acceptance on telephone amounts to ratification of what was done on behalf of the petitioner by their mother.

This brings the Court to the judgments relied upon by counsel for the petitioners. None of the judgments deal with the question of deletion of names of defendants. On the contrary, the judgments pertain to addition of a person as a party in a suit for specific performance who is not a party to the agreement of sale. As such, the petitioners cannot derive any advantage to their contention from what has been held by the Courts in the cited judgments.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final adjudication.

NOVEMBER 10, 2017		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no