

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

CR No.803 of 2017 (O&M).

Date of Decision: 03.02.2017.

Bhalinder Singh

...Petitioner.

VERSUS

Rajesh Kumar @ Shambu and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.S. Salana, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-2452-CII-2017

Allowed, as prayed for.

CR-803-2017

By way of instant petition, two orders one dated 07.08.2015 by virtue of which an application under Order XXII Rule 10 of the Code of Civil Procedure (for short, "CPC") read with Order I Rule 10 CPC filed by the petitioner was dismissed and the application filed by Rajesh Kumar @ Shambu under Order XXII Rule 3 CPC read with Section 151 CPC was allowed and the second dated 07.09.2016 vide which the application filed by the petitioner under Order I Rule 10 CPC that was dismissed in default on 12.07.2013 was declined to be restored and the application of the petitioner filed under Order XXII Rule 3 CPC for being substituted in place of deceased plaintiff Kamla was dismissed.

The submissions made Mr. G.S. Salana, learned counsel

Jitender
2017.02.17 16:27 representing the petitioner have been considered.
I attest to the accuracy and
integrity of this document

Learned counsel for the petitioner contends that Smt. Kamla, who filed a suit for specific performance of an agreement to sell dated 25.12.2003 died during pendency of the suit. During her lifetime, she executed an agreement to sell dated 18.05.2007 in respect of the property in question in favour of petitioner-Bhalinder Singh for a sale consideration of Rs.24,00,000/-. She had received Rs.5,00,000/- as earnest money and had handed over possession of the property to him in part performance of the agreement. Therefore, the petitioner is the appropriate legal representative of deceased Smt. Kamla for being substituted in her place in the suit for specific performance filed by her. Learned counsel contends that apart from the agreement to sell executed by Smt. Kamla, she had also executed her last will dated 07.06.2007 bequeathing the property in question in favour of the petitioner and therefore the petitioner only deserved to be impleaded as legal representative of deceased Kamla and learned trial Court erroneously dismissed the application filed by the petitioner on both counts.

The argument of learned counsel for the petitioner is devoid of merit. The agreement to sell, if any, executed by Smt. Kamla in favour of the petitioner conferred no title on him. In fact, Smt. Kamla herself had no title qua the suit property and had filed a suit for specific performance of the agreement to sell dated 25.12.2003 executed in her favour and her claim is still pending adjudication. In case the petitioner has any legal right or cause of action arising out of the agreement to sell executed by Smt. Kamla in his favour, he can exercise the appropriate remedy available to him under law but on the basis of any such agreement to sell he does not gain a right to sue on behalf of deceased Smt. Kamla.

As far as the second application filed by him under Order XXII Rule 3 CPC alleging that Smt. Kamla had executed a will bequeathing the suit property in his favour is concerned, that too is devoid of merit firstly on the ground that in the first application invoking the provisions of Order XXII Rule 10 CPC filed by him, he had not disclosed about any will executed by Smt. Kamla in his favour. Secondly, the application filed by one Rajesh Kumar @ Shambu under Order XXII Rule 3 CPC read with Section 151 CPC for being substituted as plaintiff in place of deceased Kamla being her legal heir on the basis of a will had already been allowed by learned trial Court vide order dated 07.08.2015. As observed above, in case the petitioner has any legal and executable right in the suit property, it is his independent right which he can pursue as per law, but on the basis of the alleged documents the right to pursue the litigation as legal representative of deceased Kamla has not accrued to him.

The application under Order I Rule 10 CPC filed by the petitioner was dismissed in default on 12.07.2013 and he filed the application for restoration of the said application after a lapse of three years without assigning any justifiable reason for such long delay, therefore, learned trial Court had rightly declined to restore the same.

Thus, there being no illegality or perversity warranting interference in the orders of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

03.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**