

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

**CR No.2062 of 2016(O&M)
Date of Decision: 09.08.2018**

Saroj

..... Petitioner

Versus

Pawan Kumar and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

None for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 02.02.2016 passed by Civil Judge (Junior Division), Bhiwani, whereby application filed by the petitioner under Order 1 Rule 10 read with Section 151 CPC was dismissed.

[2]. There was an agreement to sell dated 08.06.2009 between Mahender Kumar and Gindori @ Gomati. Consequently, sale deed was executed in favour of Gindori @ Gomati on 27.08.2010. Gindori @ Gomati in turn executed sale deed in favour of the petitioner on 02.11.2010. The present suit

was filed by plaintiff Pawan Kumar against Mahender Kumar on the basis of agreement to sell dated 15.09.2009 in respect of same property without impleading Gindori @ Gomati in whose favour earlier agreement to sell dated 08.06.2009 already stood culminated in execution of sale deed dated 27.08.2010.

[3]. In the present suit, petitioner filed an application under Order 1 Rule 10 read with Section 151 CPC on the ground that the petitioner is a necessary and effective party because she had purchased the house bearing M.C. No.G-453 measuring 161 sq. yards from Gindori @ Gomati wife of Jai Bhagwan vide sale deed dated 02.11.2010. The property has been registered in the municipal record vide serial No.826 in the name of the petitioner. The vendor of the petitioner namely Gindori @ Gomati had received the property by the dint of sale deed dated 27.08.2010 pursuant to agreement to sell dated 08.06.2009 executed by Mahender Kumar in her favour. Petitioner sought her impleadment as necessary party on the basis of title in her favour which was the subject matter of agreement to sell between Mahender Kumar and Gindori @ Gomati. The said agreement to sell was prior in point of time than the agreement to sell dated 15.09.2009 which has been made subject matter of the present suit.

[4]. On 18.03.2016, following order was passed by the High

Court:-

“Learned counsel for the petitioner submits that application under Order 1 Rule 10 of the Code of Civil Procedure, seeking impleadment in a suit seeking specific performance of the agreement to sell dated 15.09.2009, has been declined on the ground that there is no need to implead the applicant in the present case. He further submits that he had purchased the property vide registered sale deed dated 02.11.2010, from subsequent vendee, therefore, presence of the petitioner is necessary in the suit.

*In support of his contention, relied upon the judgment of the Hon'ble Supreme Court in **Thomson Press (India) vs. Nanak Builders and Investors Pvt. Ltd. & others 2013(5) SCC 397.***

Notice of motion for 20.07.2016.

Dasti process as well.

In the meantime, final order shall not be passed.”

[5]. Thereafter, respondent No.1 was served and fresh notice was issued to respondent No.2. In the order dated 25.08.2017, it was recorded that Mahender Kumar was proceeded against *ex parte* before the trial Court on 12.08.2015 and service qua him was dispensed with. None appeared on behalf of respondent No.1 despite service and the case was adjourned for 29.11.2017 and thereafter, the case came to be listed for today.

[6]. Today, there is no representation on behalf of

respondent No.1 despite service, therefore, this Court proceeded to consider the case on merits.

[7]. The status of the petitioner is a vendee as per sale deed dated 02.11.2010 executed by Gindori @ Gomati in her favour. The property has already been recorded in the municipal record. In view of ratio laid down in **Thomson Press (India) Vs. Nanak Builders and Investors Pvt. Ltd. and others case (supra)**, the petitioner is a necessary party to be impleaded as party defendant in the suit so as to avoid multiplicity of litigation. With the impleadment of the petitioner, trial Court would be in an appropriate position to adjudicate the case more effectively. No prejudice would be caused to the plaintiff.

[8]. For the reasons recorded hereinabove, the present revision petition is allowed. Impugned order dated 02.02.2016 passed by Civil Judge (Junior Division), Bhiwani is hereby set aside. Necessary consequences to follow.

August 09, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No