

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.2579 of 2014
Date of decision:19.03.2018

Surinder Pal Singh and another

... Petitioners

Vs.

Jatinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.S.Khurana, Advocate
for the petitioners.

Mr. Anupam Bhardwaj, Advocate
for respondent No.1.

Mr. Mohit Rampal, Advocate
for respondent No.2.

AMIT RAWAL J.

The petitioner-applicants sought to be impleaded under the provisions of Order 1 Rule 10 of Code of Civil Procedure in a suit seeking specific performance of the agreement to sell dated 26.04.2008 has approached this Court under Article 227 of the Constitution of India by challenging the impugned order dated 17.01.2014 (Annexure P-9), whereby, application was dismissed.

Respondent No.1/plaintiff – Jatinder Singh instituted the aforementioned suit claiming specific performance of the agreement to sell, *ibid*, on the premise that Jaspal-defendant had entered into agreement to sell for a total sale consideration of ₹2,35,00,000/- and a sum of ₹5,00,000/-, i.e. one lac in cash and four lacs through cheque was received.

The defendant appeared and contested the suit by filing the written statement denying the agreement to sell, much less receipt of earnest money of ₹5,00,000/- but averred that he had borrowed a sum of ₹1,00,000/- and had signed one blank paper alongwith son Ramandeep Singh. No such cheque of ₹4, 00,000/- was ever issued or handed over to the defendant.

During the pendency of the aforementioned suit, an application under Order 1 Rule 10 CPC (Annexure P-7) was moved by the petitioners on the ground that originally the property was owned by late Sh. Jagjit Singh, father of the applicants and defendant no.1 and after demise of Jagjit Singh, applicants and defendants became the owners in possession of the Kothi No.315, Green Avenue Amritsar. Jagjit Singh had executed a Will dated 22.03.1991 giving right of residence to his wife-Harjinder Kaur. The applicants were in possession of their respective portion, in accordance with the share given to them by virtue of aforementioned Will, whereas, defendant no.1 did not have any right to enter into alleged agreement to sell-cum-receipt. The aforementioned application was contested by the respondents.

Mr. P.S.Khurana, learned counsel appearing on behalf of the petitioners submitted that since the suit property involved subject matter of the Will, therefore, impleadment of applicants was not only necessary but proper. The trial Court gravely exercised the jurisdiction vested in law by dismissing the application. The claim put forth by respondent No.1/plaintiff in the civil suit will have definitely direct bearing on the rights and liabilities of the present petitioners, for, the suit property had not been

partitioned till date, therefore, the controversy in suit will definitely affect their rights. Non-impleadment would result into multifariousness of litigation and urged this Court for setting aside the order under challenge.

Mr. Anupam Bhardwaj, learned counsel appearing on behalf of respondent no.1 submitted that petitioners have independent right to assert the claim in the property by virtue of Will but fact of the matter is that applicants are not party to the contract, whereas, in a suit for specific performance only parties to the contract are required to be impleaded. It is not a case where by virtue of some documents the right accrued in the property. The application was filed in collusion with defendant no.1 in order to delay the adjudication of the suit and thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Khurana, Advocate, for, if at all the applicants have any grievance, they have independent right to claim the right in the property. Moreover, the aforementioned application was submitted as way back in the year 2009 which came to be decided, vide impugned order dated 17.01.2014 in a suit filed in the year 2008.

It is settled law that in case the vendee is able to prove the ingredients of Section 16(c) of Specific Relief Act, 1963 (in short “1963 Act”) for the purpose of seeking discretionary relief under Section 20 of 1963 Act, the relief can be granted by confining to the share of co-shares, in essence, vendee, in case of un-partitioned land acquired the status of co-sharer. The application was devoid of merit as applicants are not necessary

or property party.

In view of the aforementioned observations, the impugned order is perfectly legal and justified, much less the same cannot be said to have been passed without jurisdiction. No ground is made out for interference in the order under challenge.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No