

(111) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4308 of 2018

Date of decision: 19.11.2018

Arun Anand

.... Petitioner

Versus

Ved Parkash and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Arjun Veer Sharma, Advocate for the petitioner.
Mr. Gaurav Goel, Advocate for respondent Nos.1 and 2.

B.S. Walia, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 11.07.2018 passed by the learned Civil Judge (Jr. Div.), Ludhiana vide which the application under Order 1 Rule 10 read with Section 151 CPC filed by the petitioner for impleading him as defendant No.3 in civil suit in case titled as Ved Parkash Mittal and another v. Aman Anand and another, was dismissed.

[2] Brief facts of the case leading to the filing of the instant revision petition are that a civil suit was filed by respondent Nos.1 and 2 against respondent Nos.3 and 4 for specific performance of the agreement to sell dated 08.09.2015 executed by respondent Nos.3 and 4 in favour of respondent No.1 with regard to the suit property i.e. double storey house bearing Plot No.96-C measuring 150 sq. yards having electricity, water and sewerage connection situated at Phase I, Urban Estate, Dhandari Kalan,

Ludhiana as shown read in the site plan attached with the plaint and bounded as under:-

East: 97-C, West: 95-C, North: Street, South: Neighbour with a direction to respondent No.4 to execute and get registered the sale deed of the aforesaid property in favour of respondent No.1 as also for permanent injunction for restraining respondent Nos.3 and 4, their agents, attorneys, servants, employees, associates etc. from alienating, mortgaging, transferring, gifting or creating any charge over the above said property and further for restraining them from interfering or causing any interference and/or dispossessing or causing to dispossess respondent Nos.1 and 2 from the portion of the above said property already in their possession illegally, forcibly and without adopting due process of law on the basis of oral and documentary evidence.

[3] The petitioner/applicant and respondent No.3 are the sons of late Sh. Gulshan Lal while respondent No.4 is the wife of respondent No.3. Respondent No.3 executed an agreement to sell dated 08.09.2015 in favour of respondent No.1. In the application under Order 1 Rule 10 read with Section 151 CPC, it was contended that the agreement to sell in question was the result of fraud as the suit property was owned by Sh. Gulshan Lal Anand i.e. the father of the petitioner/applicant and respondent No.3 and he had never executed any Will in favour of respondent Nos.3 and 4 as alleged and that the petitioner/applicant had already filed civil suit challenging the alleged Will in which respondent Nos.3 and 4 were appearing and the present suit had been filed by respondent No.1 and 2 in connivance with respondent Nos.3 and 4 in order to grab the suit property. The petitioner/applicant had direct interest in the suit property and he was

the civil suit. In response thereto, reply was filed by respondent Nos.1 and 2 opposing the application on the ground that same was not maintainable and that the civil suit was filed on the basis of agreement to sell dated 08.09.2015 in which the petitioner/applicant was not a party, therefore, he was not impleaded as defendant in the civil suit.

[4] The learned Civil Judge (Jr. Div.), Ludhiana vide order dated 04.05.2018 dismissed the application under Order 1 Rule 10 read with Section 151 CPC by holding that the petitioner/applicant was not a necessary party to the civil suit.

[5] During the course of preliminary hearing, reliance was placed on a decision of this court in **BP Dhandha v. Ram Saran Bhatia, 2002 (3) RCR (Civil) 596.**

[6] Per Contra learned counsel appearing on behalf of respondent Nos.1 and 2 reiterated the reasoning given in the impugned order and contended that in the circumstances, the same was in accordance with law and did not warrant any interference.

[7] I have considered the submissions of learned counsel appearing for the parties and perused the file. A perusal thereof reveals that the civil suit was filed by respondent Nos.1 and 2 against respondent Nos.3 and 4 for specific performance of agreement to sell dated 08.09.2015 executed by respondent Nos.3 and 4 in favour of respondent No.1. The petitioner/applicant was not a party to the said agreement on the basis of which suit for specific performance for agreement to sell was filed. The learned Civil Judge (Jr. Div.) dismissed the application under Order 1 Rule 10 read with Section 151 CPC on the ground that there was no privity of contract between the petitioner/applicant and respondent Nos.1 and 2 and

his ownership over the suit property. The learned Civil Judge (Jr. Div.) further held that the grievance of the petitioner/applicant that agreement to sell dated 08.09.2015 was forged and fabricated could be agitated by challenging the said agreement by way of separate suit and not by moving an application under Order 1 Rule 10 read with Section 151 CPC.

[8] The matter is no longer *res integra* as the same has been dealt with by Hon'ble the Supreme Court in case titled as **Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. and others, 2010 (7) SCC 417** wherein while considering its earlier decision in **Kasturi v. Iyyamperuma, 2005 (6) SCC 733** and **Sumtibai v. Paras Finance Co., 2007 (10) SCC 82** it was inter alia held that if a person makes an application for being impleaded as a party contending that he is a necessary party and if the Court finds that he is a necessary party, it can implead him as such and if non-party makes an application seeking impleading as a proper party and the Court finds him to be a proper party, the Court may direct his addition as a defendant but if the Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit or the Court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. Relevant extract of the aforementioned decision in Mumbai International Airport's case (Supra) is reproduced as under:-

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonafides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court

finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

[9] Admittedly, in a suit for specific performance of a contract for sale of a property, a third party to the contract cannot be added as a defendant in view of decision of Hon'ble the Supreme Court in Kasturi's case (Supra). In Kasturi's case, the appellant therein had filed a suit against respondent Nos.2 and 3 for specific performance of a contract entered into between respondent No.2 acting as a Power of Attorney of respondent No.3 on one hand and the appellant on the other for sale of contracted property. Respondent No.4 was admittedly not a party to the contract and had filed an application along with others for setting up a claim of independent title and possession over the contracted property to get added as defendants in the suit. Relevant extract of the decision in Kasturi's case (Supra) is reproduced as under:-

“18. *** *** ***

It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contract property.”

The said position is also clear from the decision of Hon'ble the

wherein it was held that if a person makes an application for being impleaded as a party contending that he is a necessary party and if the Court finds that he is a necessary party, such person can be impleaded as a defendant and if a non-party makes an application seeking impleadment on the ground of being a proper party and the Court finds him to be a proper party, the Court may direct such proper party to be added as a defendant but if the Court finds that the addition of such a person will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if such person is found to be a proper party, if the Court does not wish to widen the scope of the specific performance of suit or in the alternative the Court may direct such person to be impleaded as a proper party either unconditionally or subject to terms.

[10] It is settled law that in a suit for specific performance of contract for sale, the lis between the parties to the suit only shall be gone into and it is not open to the Court to decide whether a party who has moved an application for being impleaded as a defendant has acquired any title or possession of the contracted property as the same would not be germane for decision of the suit for specific performance of the contract for sale and that can be decided in separate proceedings.

[11] In the instant case, the petitioner has already filed a separate civil suit against respondent Nos.3 and 4 in which he has challenged the Will. The petitioner is not a party to the agreement to sell dated 08.09.2015 executed by respondent Nos.3 and 4 in favour of respondent Nos.1 and 2 and on the basis of which the suit for specific performance has been filed. Thus, there is no privity of contract between respondent Nos.1 and 2 and the petitioner. The claim of the petitioner is that the alleged Will executed by

his father allegedly in favour of respondent No.3 is the subject matter of a

separate civil suit instituted by the petitioner/applicant against respondent No.3. Accordingly, if the petitioner/applicant has any grievance qua agreement to sell dated 08.09.2015 then the appropriate course of action for the petitioner is to challenge the same by way of a separate suit and not by moving the application under Order 1 Rule 10 CPC in the suit for specific performance of agreement dated 08.09.2015 filed by respondent Nos.1 &2 against respondent Nos.3 and 4. The matter is squarely covered by the decision of Hon'ble the Supreme Court in Mumbai International Airport Pvt. Ltd.'s case (Supra) and Kasturi's case (Supra).

[12] Accordingly, finding no merit with the well reasoned order passed by the learned Civil Judge (Jr. Div.), Ludhiana, the revision petition is bereft of merit and the same is dismissed.

(B.S. Walia)
Judge

November 19, 2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No