

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6576 of 2016(O&M)
Date of Decision-16.10.2018

Gurvinder Kaur @ Geeta ... Petitioner
Versus

Tejinder Singh and others ... Respondents

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

Present: Mr. Mohit Kukreja, Advocate and
Mr. Inderbir Singh, Advocate
for the petitioner.

Mr. Ashok Bhardwaj, Advocate
for respondents No.1 and 2.

Mr. Anil Puri, Advocate and
Mr. Aakash Singla, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 19.07.2016 passed by Civil Judge (Junior Division), Patiala, allowing the application under Order 1 Rule 10 CPC filed by respondents No.1 and 2.

[2]. At the time of issuance of notice of motion on 30.09.2016, following order was passed by this Court:-

“Learned counsel for the petitioner contends that agreement to sell dated 21.01.2011 and 07.03.2011 did not contain signatures of Satwinder Singh, nor carry signatures

of vendees. Learned counsel further contends that plaintiff has not claimed any relief against vendees Tejinder Singh and Ranjit Kaur.

Notice of motion for 26.10.2016. Dasti as well.

Till the next date of hearing, trial Court is directed to defer the proceedings before the next date of hearing.”

[3]. Respondents No.1 and 2 filed an application under Order 1 Rule 10 CPC for impleading them as necessary party in the suit. The suit was filed by the plaintiff Smt. Gurvinder Kaur against the defendant Devinder Kaur Mavi and others claiming estate of Satvinder Singh being legally wedded wife of Satvinder Singh (since deceased). Satvinder Singh (since deceased) husband of the plaintiff was owner in possession of the suit property as shown in the plaint. During lifetime of Satvinder Singh, he entered into an agreement to sell dated 07.03.2011 with Tejinder Singh and Ranjit Kaur and received entire sale consideration from them and also handed over the possession to the aforesaid Tejinder Singh and Ranjit Kaur. The prospective vendees claimed themselves to be in possession of the suit property and it was pleaded that Satvinder Singh through his attorney Gurnam Singh son of Rattan Singh entered into agreement to sell in respect of his property and the attorney received an amount of Rs.4,00,000/- as earnest money from Ranjit Kaur and the date of execution of sale deed was fixed as 07.03.2011. The remaining amount of sale consideration was agreed to be paid on the date of execution of sale deed i.e.

07.03.2011. On 07.03.2011, Satvinder Singh personally approached to the prospective vendees and instead of executing the sale deed in favour of Ranjir Kaur, another agreement to sell dated 07.03.2011 in favour of Tejinder Singh and Ranjit Kaur was executed and the entire remaining sale consideration was received towards full and final payment. Satvinder Singh received an amount of Rs.21,32,000/- from the prospective vendees namely Tejinder Singh and Ranjit Kaur and assured that he will get the sale deed executed as and when they will call for the same. No date was fixed for execution of sale deed in the agreement to sell dated 07.03.2011. Thereafter, Satvinder Singh returned to USA and the sale deed was not executed and registered.

[4]. Trial Court while accepting the application recorded that in pursuance of agreement to sell dated 07.03.2011 allegedly executed by Satvinder Singh in favour of the prospective vendees, possession of the land bearing khasra No.884/1/(5-13) out of 5-1/4/113 i.e. 0-5-1/4 biswa i.e. 260 sq. yards was delivered. Plaintiff has filed the suit for possession against the defendants including the aforesaid land. In case, the suit is decreed, the prospective vendees will suffer irreparable loss. The trial Court further held that though the possession of the prospective vendees was not established merely by placing on record photocopy of the sale agreement, yet the same can be determined by the Court with reference to evidence to be led by

the parties at appropriate stage. By impleading prospective vendees of agreement to sell dated 07.03.2011, the multiplicity of litigation would be avoided. In this way, Tejinder Singh and Ranjit Kaur were allowed to be impleaded as necessary party to the suit.

[5]. Learned counsel for the petitioner submitted that the prospective vendees namely Tejinder Singh and Ranjit Kaur have claimed their independent title and possession over the suit property, therefore, they were at liberty to establish their independent title viz-a-viz the land on the basis of agreement to sell dated 07.03.2011. In a suit for declaration filed by the plaintiff, the aforesaid persons cannot establish their title arising out of agreement to sell dated 07.03.2011. They could have filed their independent suit for specific performance on the basis of agreement to sell dated 07.03.2011. Learned counsel relied upon **Kasturi Vs. Iyyamperumal and others, 2005 SC 2813** and contended that the controversy between the contesting parties as set up on the one side or denial on the other side have to be decided in the suit and not the controversies which may arise between the parties or the questions between the parties to the suit and a third party. The Court cannot allow adjudication of the collateral matters so as to convert a suit for declaration between the parties into a complicated suit for title in favour of prospective vendees which was subject matter of agreement to sell dated 07.03.2011 for which no independent suit was filed within

limitation of three years. In a way, the impleadment of Tejinder Singh and Ranjit Kaur would convert the suit for declaration filed by the plaintiff against Devinder Kaur Mavi and others into a complicated suit for title in which title of the prospective vendees based on agreement to sell dated 07.03.2011 would be tested. The independent suit based on agreement to sell dated 07.03.2011 has not been filed by the prospective vendees. Learned counsel further contended that addition of the parties would lead to a complicated litigation which would be totally out of scope of the suit.

[6]. In the present suit, it would not be open to the Court to decide the question of possession of third party/prospective vendees. For deciding such a controversy, parameters on which specific performance can be granted would make the present suit so complicated that it will lose its colour and flavor and the plaintiff would not be a party to the *lis* arising out of agreement to sell. Plaintiff being *dominus litus* cannot be forced to add parties against whom he does not wish to contest.

[7]. In the suit filed by the plaintiff, it was pleaded that property mentioned at point 'A' was owned by Satvinder Singh having purchased vide sale deed dated 27.08.2007, whereas Satvinder Singh agreed to purchase the lands mentioned at point 'B' and 'C', but the sale deeds could not be executed in favour of Satvinder Singh due to his death. Plaintiff further pleaded that

plaintiff being one of the legal heirs of Satvinder Singh is in joint possession of the properties mentioned at point 'A' to 'C' along with defendants No.2, 7 and 8, whereas the plaintiff is in joint possession of the properties mentioned at point 'D' and 'E' with defendants No.2, 4 to 8. Plaintiff further pleaded that after submission of the application for claiming estate by the plaintiff, defendant No.1 started claiming herself to be wife of Satvinder Singh having allegedly married him in USA. Satvinder Singh never performed marriage with defendant No.1 as the marriage between the plaintiff and Satvinder Singh subsisted till the death of Satvinder Singh. In fact, defendant No.1 was married to Surinder Singh and having two sons from the said marriage. The alleged marriage of defendant No.1 with Satvinder Singh was void.

[8]. In the application under Order 1 Rule 10 CPC, the prospective vendees of the agreement to sell pleaded that after the agreement to sell dated 07.03.2011, Satvinder Singh went to USA and the sale deed was not executed in their favour. At that time, the prospective vendees did not force him to execute the sale deed as Satvinder Singh had already put them in possession of the suit property as mentioned in column A of the plaint. Thereafter, they made telephonic calls to Satvinder Singh for execution of sale deed and also talked with Devinder Kaur Mavi. They always put the matter by saying that when they will visit India, they will execute the sale deed. In the month of July, 2014,

the prospective vendees came to know from some reliable source that Satvinder Singh has expired and the plaintiff has tried to call defendant No.1 and asked about registration of the sale deed on the basis of agreement to sell dated 07.03.2011, but defendant No.1 kept mum and did not give any positive response.

[9]. The pleadings made in the application would show that cause of action pleaded by the prospective vendees was against defendant No.1 Devinder Kaur Mavi and not against the plaintiff by any stretch of imagination.

[10]. Since the prospective vendees claimed themselves to be in possession on the basis of their independent title arising out of agreement to sell coupled with delivery of possession after payment of entire sale consideration, therefore, addition of the aforesaid prospective vendees in a suit for declaration would totally change the complexion of the present suit. In my considered opinion, the addition of prospective vendees of agreement to sell dated 07.03.2011 would not be in the interest of justice.

[11]. For the reasons recorded hereinabove, in my considered opinion, this revision petition deserves to be accepted. Respondents No.1 and 2 if at all aggrieved with any in-action arising out of agreement to sell, would be well within their right to enforce the same in accordance with law. They cannot intrude in the suit for declaration filed by the plaintiff against the

defendants as the subject matter of the suit cannot be allowed to be complicated so as to render it indecisive.

[12]. In view of above, the present revision petition is allowed. Impugned order dated 19.07.2016 passed by Civil Judge (Junior Division), Patiala is set aside. Application under Order 1 Rule 10 CPC filed by respondents No.1 and 2 is hereby dismissed in toto. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

16.10.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No