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

CR-6855-2016

Date of decision : 06.02.2018

Manjit Singh

... Petitioner(s)

Versus

Partap Singh (since deceased) through LRs and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Arora, Advocate
for the petitioner.

Mr. Vivek Salathia, Advocate
for respondent Nos.1(i) to 1(iii).

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 19.07.2016 (Annexure P-1), whereby an application under Order 1 Rules 10(2) read with Order XLI Rule 25 CPC, in an appeal between Partap Singh, appellant-defendant and Kartar Singh, respondent-plaintiff on the premise that the vendor Partap Singh/respondent No.1, during the subsistence of the agreement to sell or pendency of the suit, had executed an agreement to sell on 04.03.2015, therefore, the petitioner-Manjit Singh is necessary and essential party to be impleaded as right has enured on account of agreement to sell, which is based upon the payment of earnest money, has been dismissed. This fact has not been noticed by the Court below, thus, there is an abdication, much less, fallacy.

Learned counsel appearing on behalf of LRs of Partap

Singh/respondent No.1, submitted that the remedy for the petitioner is to file independent suit, but not in the manner and mode as he cannot even claim the specific performance or recovery rights against a co-defendant, therefore, the application has rightly been dismissed, thus, urges this Court for dismissal of the present revision petition by upholding the order, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Arora, learned counsel for the petitioner. The petitioner, in my view, has an independent remedy to institute a suit for claiming either specific or alternative relief against Partap Singh as he cannot set up the counterclaim against a co-defendant in a suit, when the appeal is pending.

With the aforesaid observations, by upholding the impugned order dated 19.07.2016 (Annexure P-1), the present revision petition stands disposed of.

06.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No