

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

CR No.7097 of 2018

Date of Decision : 23.10.2018

Shamshad and another

.....Petitioners

Versus

Avtar Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Brijeshwar S. Bhalla, Advocate
for the petitioners.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the impugned order passed by the Civil Judge, Junior Division (during vacation), Malerkotla on 28th September, 2018.

2. Vide the impugned order the application of the present petitioners who happen to be the minor sons of Pala Khan, the main defendant in the original Civil Suit pending in the Ld. Court below, which was filed in the year 2014, for being added as parties under Order 1 Rule 10 read with Section 151 of the Civil Procedure Code (for short, 'the CPC'), had been dismissed.

3. The background of the matter is that the suit had been filed by respondent No.1-Avtar Singh against the said Pala Khan and his mother Dhanno seeking specific performance of an Agreement to Sell dated 6th July, 2011 as well as certain subsequent written

acknowledgments issued on behalf of the said defendants pertaining to the disputed land measuring 7 Bighas, 04 Biswas, 04 Biswasi, more-fully described in the original plaint. The petitioners through their mother approached the Ld. Court below for being made defendants by claiming that the disputed land/some portion thereof had already been transferred in their favour by the original defendant by way of an oral Hiba, which however was not entered in the Revenue Records, and taking advantage of which omission the original defendants sought to deprive the petitioners of their due entitlement by entering into the impugned agreement with the plaintiff.

4. The Ld. Court below however dismissed the application after observing *inter alia*,

“This Court has heard learned counsel for the applicant as well as learned counsel for the plaintiff. The applicant wants to become defendants in the case in hand on the ground that the defendant No.1 had executed oral gift dated 27/04/2010 in their favour. It is also argued by learned counsel for the applicant that since the defendant No.1 has no right, title or interest with regard to the suit property, therefore defendant No.1 or his attorney has no right to enter into agreement to sell dated 06/07/2011 and subsequent writings with the plaintiff. Perusal of the file reveals that the applicants are none other than the minor children of defendant No.1 and they are claiming themselves to be owner of the suit property on the basis of oral gift dated 27/04/2010. However,

perusal of the revenue record reveals that the applicants are neither owner nor in possession of the suit property, whereas, it is the defendant No.1 who is owner in possession of the suit property. Perusal of the file further reveals that the defendant No.1 and the applicants are a resident of one and same address and if there was any truth in the application of the applicant, then the facts mentioned in the application should have been mentioned by defendant No.1 in his written statement. Perusal of a written statement of defendant No.1 clearly transpires that there is no reference of oral gift by him in favour of the applicants. It seems that the applicants have tried to put up a concocted story. Moreover, the application has been filed at a very belated stage of the case. Accordingly, the application stands dismissed and disposed of in above terms.”

5. The petitioners are now aggrieved that the Ld. Court below did not even refer to the material fact as mentioned in Para (iv) of their application under Order 1 Rule 10 of the CPC that they themselves had separately filed a Civil Suit for declaration bearing No.126 dated 26th October, 2016 in the Court of Ld. Civil Judge, Junior Division, Malerkotla, which was a vital fact to be considered before summarily rejecting their application.

6. After going through the available material on record and hearing Ld. Counsel for the petitioners, this Court finds no illegality or impropriety in the decision of the Ld. Court below.

7. At the outset it may be mentioned that the plaintiff being in the position of “*dominus litus*” is entirely the master of his suit and as per settled law cannot be compelled to litigate against any person from whom he seeks no relief. The alleged cause of action for the plaintiff/respondent in the present case would appear to have arisen from the agreement allegedly entered into by himself and the principal defendant No.1, and any previous transfer of property by the said defendant whether in favour of the petitioners or anyone else, of which he had no notice would not be binding upon him. Even otherwise the suit was filed by him in the year 2014, and therefore the fact that the present petitioners had filed their own separate suit two years later in the year 2016 would certainly not been helpful for them.

8. No grounds are therefore made out to interfere with the impugned order.

9. Dismissed.

October 23, 2018

Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No