

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 797 of 2018 (O/M)
Date of decision : 6.2.2018

Ram Murti Yadav

..... Petitioner

Versus

Vijay Shankar Yadav and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.K. Aggarwal, Advocate, for petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 10.10.2017 (Annexure-P-1), passed by learned District Judge, Ambala, vide which during the pendency of appeal against judgment and decree dated 31.10.2015, passed by learned Civil Judge (Senior Division), Ambala, an application filed by present petitioner, namely, Ram Murti Yadav, daughter of Amar Nath Yadav, under Order I Rule 10 of Civil Procedure Code, 1908, was dismissed.

I have heard the learned counsel for petitioner and have also carefully gone through the file.

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It comes out that a suit for possession by way of specific performance of agreement was filed by one Vijay Shankar Yadav against Surinder Kumar, brother of present petitioner. The suit was decreed by the trial Court. Consequently, defendant-respondent No. 2 filed an appeal before the learned District Judge, Ambala. Present petitioner claims that property was originally owned by their father Amar Nath Yadav and after his death in the year 1996, the house was succeeded by two brothers and five sisters. It is stated that in the municipal records, two brothers fraudulently got the entries made in their favour only. It is also not disputed that sisters have filed a separate suit to claim the ownership of the house. Now, their brother Surinder Kumar, claiming to be owner to the extent of half share in suit, allegedly entered into an agreement with plaintiff-respondent No. 1, which is sought to be enforced through the civil court. It is contended that present petitioner is a necessary party.

I am of the view that if any decree is passed in favour of plaintiff-respondent No. 1, that can be enforced against the rights of defendant-respondent No. 2, whatever it may be and plaintiff-respondent No. 1 will only then step into shoe of defendant-respondent No. 2 and he cannot get more than what is owned by defendants. Petitioner along with his sisters has already filed a separate suit claiming their share in the said property/house. The rights of petitioners are yet to be decided in the said suit. In the present case, the Court is only concerned with rights of plaintiff-respondent No. 1 in half portion of the house and if ultimately, it is found in the separate civil suit that defendant-respondent No. 2 owns less than half share, plaintiff-respondent No. 1 will only then step into shoe of defendant. The suit can be decided without the presence of present

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petitioner. There is no illegality or infirmity in the impugned order.
Therefore, instant revision is dismissed.

(KULDIP SINGH)
JUDGE

6.2.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No