

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.992 of 2018

Date of Decision.20.02.2018

Raj Singh and another

.....Petitioners

Vs

Virender Rana and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sonia G. Singh, Advocate
for the petitioners.

Mr. Manoj Kumar Taya, Advocate
for the caveator-respondent No.1.

:-

AMIT RAWAL J.(ORAL)

Notice of motion.

Mr. Manoj Kumar Taya, Advocate accepts notice for
respondent No.1.

The present revision petition is directed against the impugned
order whereby in the civil suit titled as “Virender Rana Vs. Randeep Singh
and others” for recovery of ₹10,19,280- along with interest @24%, two
applications were filed by petitioners-defendant Nos.2 and 3 under Order 1
Rule 10 (2) CPC and order 7 Rule 11 CPC which were dismissed vide order
of even date i.e. 24.01.2018. However, the revision petition is confined to
the impugned order qua dismissal of the application submitted under Order
1 Rule 10 CPC.

Ms. Sonia G. Singh, learned counsel appearing for the
petitioner submitted that the respondent-plaintiff instituted the suit
aforementioned by impleading Randeep Singh and petitioners herein i.e. Raj
Singh and Guddi, defendant No.2 and 3. On the basis of an agreement

dated 12.01.2013 (Annexure P-7), there was no privity of contract between the plaintiff and the petitioner-defendant No.2 and 3 as the agreement was entered into between the plaintiff and defendant No.1 attested by witnesses T.L. Jaggi s/o Gurdass Mal and Ompal son of Dhani Ram. It is in this background, application was moved for deleting name of the defendant Nos.2 and 3 but the same has erroneously been dismissed. Litigation cannot be thrust upon a person in such a manner and mode. Despite that fact, the trial Court abdicated in dismissing the application, therefore, there is illegality and repugnancy.

The objection qua maintainability of the suit has been taken in the written statement already filed. An issue in this regard has also been framed, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Manoj Kumar Taya, learned counsel appearing on behalf of the respondent-plaintiff submitted that there is specific averment in the plaint with regard to role and involvement of the petitioners arrayed as defendant No.2 and 3. He has drawn attention of this Court to paragraph 2 and as well as prayer clause whereby the amount of recovery as aforementioned has been sought to be recovered against the defendants.

He further submitted that the plaintiff has already examined himself and other witnesses, who have been coherent and categorical regarding the involvement of the petitioner-defendant No.2 and 3. It would be a subject matter of adjudication by the trial Court but not in such manner and mode, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Sonia G. Singh. Para 2 of the plaint reads thus:-

“2. That defendant No.1 to 3 along with other Balbir Singh and Pardeep Singh came to the house of plaintiff on dated 10.1.2013 and stated that marriage of daughter of Raj Singh and Guddi defendant No.2 & 3 and sister of Randeep Singh defendant No.1 will be held in 1st week of February 2013 for that they require some amount in cash for the marriage. Randeep Singh is defendant No.1 have a residential plot No.70 in village Kambopura Tehsil and district Karnal, measuring area 169.88 sy. yds comprised in Khewat No.220 Khatoni No.275, 277 kittas-41 in which defendant No.1 is owner of land measuring 6B-17B out of land measuring 136B-17B as per jamabandi for the year 2008-2009. Abovesaid defendant had shown a mutation in favour of defendant No.1 regarding the land 6B-17B. Plaintiff ask the rate of per sq. yds to defendants. Then defendant No.1 told to plaintiff rate of plot is Rs.6000/- per sq. yds. Plaintiff was agreed with the rate of abovesaid rate and total amount was account i.e. Rs.10,19,280/-. As per advise of the above said defendant that now they will execute a full payment agreement to sell as they are busy in the marriage and after marriage they will execute and register the sale deed in favour of plaintiff. Defendant No.1 purchased the stamp paper and written an agreement to sell in that stamp paper on 12.1.2013 and defendant No.1 to 3 came to plaintiff's house on 13.1.2013 along with written agreement to sell having revenue stamp pasted on it. Photocopy of that agreement to sell is attached herewith. Thereafter, in the presence of witnesses

plaintiff had paid amount of Rs.10,19,280.00 to defendants No.1 to 3. After taking and counting the abovesaid amount from plaintiff, defendant No.1 had signed on the agreement to sell, in the presence of witnesses and plaintiff also signed on it.”

Genesis of the suit has not been based upon only on the agreement whereby defendant No.1 had agreed to return the amount of ₹10,19,280/- but the fact of the matter is that there is attribution of involvement of petitioners-defendant No.2 and 3. This is what the witnesses have stated.

In my view, the petitioners shall be liberty to prove their non-involvement by leading evidence permissible in accordance with law but not in the manner and mode sought, that is too when the suit has already reached to the stage of plaintiff's evidence.

In view of the aforementioned, I do not find any illegality and perversity in the order under challenge and the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 20, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No