

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

**Civil Revision No.6624 of 2014
Date of Decision: 22.05.2019**

Avi (Minor) and another

.....Petitioners

Vs

Avtar Singh and others

....Respondents

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

Present: Mr. Deepak Sharma, Advocate
for the petitioners.

Mr. Vineet Chaudhary, Advocate
for respondent No.1.

Mr. Shantanu Sangwan, Advocate for
Mr. Partap Singh, Advocate
for respondents No.2, to 5.

RAJ MOHAN SINGH, J

[1]. Petitioners have preferred this revision petition against the order dated 25.01.2014 passed by the Civil Judge (Sr. Divn.) Kaithal, vide which the application filed by them under Order 1 Rule 10 CPC was dismissed.

[2]. Brief facts of the case are that the petitioners are minor son and widow of Surender son of Rajbir Singh. Surender was pre-deceased son of Rajbir Singh i.e. the original defendant in a

suit for specific performance. After the death of Surender, petitioner No.1 was given his due 1/3rd share in the land measuring 22 ½ acres, apart from other ancestral properties in the hands of his grandfather namely Rajbir Singh in the family settlement dated 13.03.2001. Petitioner filed a suit for declaration and permanent injunction on the basis of said family settlement. Against the judgment and decrees passed by the Courts below, RSA No.3513 of 2010 was filed by the petitioner which according to the information given by learned counsel for the petitioners stands accepted and the share of the petitioners has been acknowledge in the property i.e. land measuring 22 acres. During pendency of the suit, Rajbir Singh was restrained from alienating the suit property and the said injunction order was upheld by the High Court vide order dated 07.12.2006 passed in CR No.2784 of 2006.

[3]. The present suit was filed by Avtar Singh-respondent No.1 for specific performance on the basis of agreement to sell dated 20.12.2005 allegedly executed by Rajbir Singh. With regard to the same land, Rajbir Singh allegedly entered into agreement to sell with respondent No.1 for the sale of land measuring 140 Kanals 0 Marla for a total sale consideration of Rs.7,30,000/-.

[4]. Rajbir Singh contested the suit and denied execution of

any such agreement. During pendency of the suit, Rajbir Singh has expired and the petitioners and proforma respondents No.2 to 5 have been impleaded as legal representatives of deceased Rajbir Singh.

[5]. By way of moving the application under Order 1 Rule 10 CPC, the petitioner sought to get themselves impleaded in their substantive capacities being owners of shares of properties in question. In the capacity of legal representatives, the petitioners are already on record. The acceptance of RSA No.3513 of 2010 would confer right of co-sharership in favour of the petitioners.

[6]. For impleading parties in a suit for specific performance two tests are to be satisfied. Firstly, there must be a right to some relief against the plaintiff in respect of suit property. Secondly, that in the absence of the petitioners, no effective adjudication can be made by the trial Court. In a suit for specific performance, necessary parties are those persons in whose absence no decree can be passed. Proper parties are those persons whose presence before the Court would be necessary in order to enable the Court to decide and adjudicate the *lis* in an effective manner. The persons strangers to the agreement to sell cannot be termed as necessary and appropriate parties as collaterals matters cannot be adjudicated in a suit for specific

performance. By allowing such a course, the suit itself will be converted into a complicated suit for title.

[7]. The acceptance of Regular Second Appeal would make the petitioners to be co-sharers in the suit property. The adjudication of a suit for specific performance would be confined to the legality and propriety of the agreement to sell. Petitioners are not necessary parties for specific performance of agreement to sell as in the event of decretal of the suit, the petitioners would become co-sharers along with the plaintiffs and either of the parties may seek partition of land according to their entitlements. Petitioners are not required to be impleaded and ought not to have been joined as parties to the suit because they are neither necessary, nor proper parties to the suit for specific performance. For the relief of specific performance, the petitioners are strangers to the extent of their substantive right in the undivided property. The strangers to the contract/agreement, if make claim adverse title to the defendant/vendor by claiming co-sharership in the suit property, strangers are neither necessary parties, nor entitled to be joined as party defendants in the suit.

[8]. The scope of suit for specific performance cannot permit third party claiming to be joint owners in the property in question, the strangers to the agreement/contract making a

claim adverse to the title of the defendant by claiming right of co-sharership in the suit property cannot be termed to be necessary party, nor proper party for adjudication of the case on merits. In this context reference can be made to **Kasturi vs. Iyyamperumal & Ors., 2005(2) R.C.R. (Civil) 691; Anil Kumar Singh vs. Shivnath Mishra @ Gadasa Guru, 1995(1) R.R.R. 660; Krishan Lal vs. Tek Chand, 1986(2) PLR 616 and Om Parkash and another vs. Rajni Gupta and another, 2008(1) R.C.R. (Civil) 400.**

[9]. The petitioners have already been impleaded in their capacities as legal representatives of deceased Rajbir Singh. To the extent of implication of Rajbir Singh, the petitioners have right of representation. Insofar as their substantive right of being a co-sharer in the suit property is concerned, they can only be treated as 3rd party having no right of representation in a suit for specific performance as they cannot claim adverse to the title of the vendor/Rajbir Singh by contending themselves to be co-sharers in the contracted property. In such a situation, they are neither necessary, nor proper parties and cannot be allowed to be joined as party defendants in the suit. In a suit for specific performance, other co-sharers are not necessary or proper parties.

[10]. In view of ratio of the aforecited precedents, I find no

merit in the contentions raised by learned counsel for the petitioners. This revision petition is accordingly dismissed.

May 22, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No