

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

105

CR No.6541 of 2018

Date of Decision : 08.03.2019

VIJAY MAMGAIN.

....PETITIONER

V/S

RAM SINGH AND OTHERS.

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Ankit Chowdhri, Advocate for the petitioner.

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**B.S. WALIA, J.**

[1] Civil Revision petition has been filed under Article 227 of the Constitution of India, praying for setting aside order dated 12.07.2018, passed by the learned Civil Judge (Senior Division), Chandigarh, dismissing the application of the petitioner under Order 1 Rule 10 CPC for impleading the petitioner as a party in suit titled as '*Ram Singh and another versus Chanderma Mamgain and others*'.

[2] Brief facts of the case leading to the filing of the revision petition are that a civil suit was filed by respondent Nos.1 & 2/plaintiffs against respondent Nos.3 to 5 i.e. defendant Nos.1 to 3 for specific performance of agreement to sell dated 08.07.2010, allegedly executed by respondent No.3/defendant No.1 in favour of respondent Nos.1 & 2 i.e. plaintiffs in respect of 50% share in House No.3389 Sector 27-D, Chandigarh.

[3] The petitioner filed an application under Order 1 Rule 10 CPC praying to be impleaded as defendant in the aforementioned civil suit on the ground that the house in question had been purchased by him way back in the

year 2002 by making payment exclusively from his own funds and by raising loan from the bank and in order to avoid tax related problems and keeping in view relations between the parties, sale deed in respect of 50% share in the house in question was got executed by the petitioner in the name of respondent No.3 defendant No.1 i.e. his wife, otherwise his wife was illiterate and had no independent source of income nor had contributed any money for purchasing the said house. Therefore, she was only a *benami* owner of the suit property. Petitioner had also purchased another property at Rishikesh in the name of respondent No.3 defendant No.1 and entire funds for purchase of the same were paid for by him and respondent No.3 defendant No.1 was only a name lender. Subsequently, relations between the parties got strained and respondent No.3 defendant No.1 tried to sell 50% share in the house in question to one Narinder Singh Cheema and when the petitioner came to know about the aforementioned fact, he filed a suit for declaration for mandatory injunction and permanent injunction against respondent No.3 defendant No.1 and in the said suit, while allowing the application for interim injunction, respondent No.3 defendant No.1 was restrained from alienating the 50% share to any other person. Eventually, the matter was compromised and respondent No.3 defendant No.1 admitted the claim of the petitioner with regard to the ownership in respect of 100% share including 50% share which was purchased by the petitioner in the name of respondent No.3 defendant No.1 and also agreed to get the same transferred in the name of the petitioner. The petitioner fulfilled the terms of the compromise and all cases pending between the parties were withdrawn in terms of compromise deed dated 26.04.2010 but respondent No.3 defendant No.1 failed to abide by the terms and conditions of compromise deed dated 26.04.2010 and did not get transferred 50% share in

the house in question in the name of the petitioner. Thereafter, the petitioner came to know that respondent No.3 defendant No.1 was negotiating with somebody else for sale of 50% share in the house in question. Thereupon, the petitioner filed another suit for declaration, mandatory injunction as well as permanent injunction against respondent No.3 defendant No.1, which is pending adjudication before the Court of the learned Civil Judge (Senior Division), Chandigarh and in the said suit also temporary injunction had been granted and respondent No.3 defendant No.1 had been restrained from alienating 50% share to any other person.

[4] In the aforementioned background, it was pleaded that the petitioner was the sole owner in possession of the house in question, which was the subject matter of the suit filed by respondent Nos.1 & 2/plaintiffs with regard to sale of 50% share in the house in question, therefore, the petitioner was a necessary party to the said suit, as ownership rights of the applicants were involved in the said suit. Respondent Nos.1 & 2 i.e. plaintiffs filed a reply to the application, contending that the application was solely with a view to delay the proceedings of the case otherwise the petitioner-applicant and respondent No.3/defendant No.1 were hand in glove and while denying the averments in the application, prayer was made to dismiss the same.

[5] The learned trial Court observed that although the counsel for the petitioner had relied upon the copy of compromise deed allegedly executed between the petitioner-applicant and respondent No.3/defendant No.1 yet there was nothing on the record to prove the authentic execution of the said compromise deed and that although counsel for the petitioner-applicant had also averred that on earlier occasion when respondent No.3/defendant No.1 tried to sell her 50 % share in the house in question, the petitioner had filed the

civil suit in which alienation of 50% share in the name of respondent No.3/defendant No.1 was stayed and respondent No.3/defendant No.1 was restrained from disposing off her said 50% share in the house in question but the petitioner-applicant had not placed on record any such order besides he had also failed to disclose the fate of the said civil suit allegedly filed by him against respondent No.3 defendant No.1. The learned trial Court further observed that the petitioner-applicant had pleaded that he had duly complied with the terms of the compromise deed but still respondent No.3/defendant No.1 was not complying with the terms of said compromise deed on her part and the petitioner-applicant had not placed on record any document to prove that he had complied with the terms of the compromise deed. The learned trial Court further took into account that as per Clause 6 of the compromise deed, the petitioner-applicant was to pay a sum of Rs.22,00,000/- to respondent No.3/defendant No.1 as full and final settlement between them but the petitioner-applicant had not placed on record any document in the shape of receipt or any statement to show that he had actually paid the said amount to respondent No.3/defendant No.1 and in the circumstances, held that there was nothing on the record to suggest that the petitioner-applicant was a necessary party to the litigation. Accordingly the learned trial Court dismissed the application under Order 1 Rule 10 CPC vide order dated 12.07.2018.

[6] Learned counsel for the petitioner reiterated the plea as raised by him before the learned trial Court and contended that in the circumstances, the petitioner-applicant was a necessary party as his ownership rights were involved in the suit property in question.

[7] I have heard learned counsel for the petitioner.

[8] Admittedly, the suit was filed by respondent Nos.1 & 2/plaintiffs for specific performance of agreement to sell dated 08.07.2010 executed by respondent No.3/defendant No.1 in favor of respondent Nos.1 & 2/plaintiffs in respect of 50% share of house standing in her name. Respondent No.3/defendant No.1 contested the civil suit by filing written statement denying the execution of agreement to sell dated 08.07.2010 and alleging the agreement to sell to be the result of forgery, and also denied having received any amount in respect of the alleged agreement to sell dated 08.07.2010 as projected by respondent Nos.1 & 2/plaintiffs. The learned trial Court took into account that although the case was listed for service of respondent No.3/defendant No.1, it was at that stage that the petitioner-applicant had appeared and filed the application under Order 1 Rule 10 and respondent No.3/defendant No.1 did not opt to file any reply to the application under order 1 Rule 10 instead filed the written statement to the main suit denying the due execution of the agreement to sell dated 08.07.2010.

[9] It is settled law that in a suit for specific performance of a contract for sale, the *lis* is between the vendor and the vendee i.e. respondent Nos.3/defendant No.1 and respondent Nos.1 & 2 i.e. plaintiffs and it is not open to the Court to decide whether a third party i.e. petitioner-applicant in the instant case has any title over the contracted property, as the same is not *germane* for decision in the suit for specific performance of the contract for sale. In other words, in the suit for specific performance of the contract for sale in the instant case, the controversy to be decided is as raised by respondent Nos.1 & 2/plaintiffs against respondent No.3 defendant No.1 and the Court cannot decide the question of title and possession of petitioner-applicant relating to the contracted property. Reference in this regard can be

made to the decision of Hon'ble the Supreme Court in 'Kasturi versus Iyyamperumal and others', 2005(6) SCC 733. The point in issue in the aforementioned case was as under :-

*“The only question that needs to be decided in this case is whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, is entitled to be added as a party/defendant in the said suit.”*

Appellant in Kasturi's case (*supra*), had filed a suit against respondent Nos.2 & 3 therein for specific performance of a contract entered into between respondent No.2 acting as *power of attorney* of respondent No.3 on the one hand and the appellant on the other for sale of the contracted property. In the aforementioned suit for specific performance of the contract for sale, respondent Nos.1 and 4 to 11 were admittedly not parties to the contract and had set up a claim of an independent title and possession over the contracted property and thereby filed an application to get themselves added in the suit as defendants. The learned trial Court in the said case allowed the application, and the order was upheld in revision by Hon'ble the High Court, but Hon'ble the Supreme Court set aside the judgment and orders of the High Court and the trial Court and the application for addition of parties filed at the instance of respondent Nos.1 & 4 to 11 was rejected by allowing the appeal, while leaving the question as to title and possession of respondent Nos.1 & 4 to 11 *qua* the suit property open in the event any approach was made by either of respondent Nos.1 and 4 to 11 or by the appellant in any appropriate Court

of law. Relevant extract of the decision in **Kasturi's case** (*supra*) is reproduced as under:-

*“17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.”*

*“18. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.”*

[10] In the light of the decision of Hon'ble the Supreme Court in **Kasturi's case** (*supra*), it is settled law that in a suit for specific performance of the contract for sale, it is only the *lis* between the vendor and the vendee which is to be gone into and it is not open to the Court to decide whether the

third party has acquired any title and possession over the contracted property, as the same is not *germane* for the decision in the suit for specific performance of the contract for sale. In other words, in a suit for specific performance of the contract for sale, the only controversy which is to be decided is the one raised by the vendee against the vendor and a stranger to the contract i.e. the petitioner-applicant herein making a claim independent and adverse to the title of respondent No.3/defendant No.1 is neither a necessary nor a proper party, therefore, not entitled to be joined as a defendant in the suit for specific performance of contract for sale filed by respondent Nos.1 & 2/plaintiffs against respondent No.3/defendant No.1. Accordingly, finding the revision petition bereft of merit, the same is ***dismissed in limine***.

(B.S. WALIA)  
JUDGE

**March 8, 2019**

rajneesh

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|---------------------------|----------|
| Whether speaking/reasoned | : Yes/No |
| Whether reportable        | : Yes/No |