

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

CR-1631-2018 (O&M)
Date of decision : 24.02.2020

Parmal and another

...Petitioners

Versus

Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. J.S. Dahiya, Advocate and
Ms. Rimjhim Mahajan, Advocate for the petitioners.

Mr. Sanjiv Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs have filed the present revision petition against the order passed by the learned trial Court, dismissing their application for impleading certain person as the defendants. The plaintiffs have filed the suit for possession by way of specific performance of the agreement to sell.

The decree is sought against Smt. Devi wife of Sadhu Ram who has alleged to have entered into an agreement to sell. Defendant Nos.2 and 3 are transferees from Smt. Devi. Now, the plaintiffs claim that defendant Nos.2 and 3 have further entered into the agreement to sell during the pendency of the suit in favour of the persons who are sought to be impleaded.

The learned trial Court, after discussing various aspects of the case, has held that the persons sought to be impleaded as defendant No.4 and 5 are neither necessary nor proper parties.

This Court has heard learned counsel for the parties at length and

with their able assistance, gone through the paper book.

Learned Senior Counsel appearing on behalf of the petitioner has relied upon the order passed by Hon'ble the Supreme Court in the case of **Robin Ramjibhai Patel Vs. Anandibai Rama alias Raja Ram Pawar and others, (2018) 15 SCC 614** to contend that in similar circumstances, an application filed by the plaintiffs was allowed by the Supreme Court. He further relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others, 2019 SCC Online SC 912.**

The Court has power to strike out or add parties in accordance with Order 1 Rule 10 CPC. Sub Rule 2 of Rule 10 of Order 1 CPC enables the Courts to implead/add parties if the Court finds that their presence would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Order 1 Rule 10 of the Code of Civil Procedure is extracted as under:-

“10. Suit in name of wrong plaintiff— (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party

improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

*(4) **Where defendant added, plaint to be amended**—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.*

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

On careful reading of the aforesaid provision, it is apparent that the Court can add party during the pendency of the suit only if the Court comes to a conclusion that the presence of such party shall be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In a suit for possession by way of specific performance of the agreement to sell, the Court is required to adjudicate upon the validity and correctness of the agreement to sell and entitlement of the plaintiffs. Hence, defendant Nos.4 and 5 (proposed to be added) are not necessary parties.

This aspect can be examined from another angle. Defendant

Nos.4 and 5 (sought to be added) have no right, title or interest in the property. At the most, the allegations are that they have entered into the agreement to purchase from defendant Nos.2 and 3. Section 54 of the Transfer of Property Act, specifically provides that the agreement to sell itself does not create right in the immovable property. Still further, such agreement to sell is during the pendency of the suit. Hence, all the transactions during the pendency of the suit, shall be governed by the rule of lis pendens and therefore, all the transactions are subservient to the result of the suit.

This Court has carefully read the order passed by Hon'ble the Supreme Court in the case of Robin Ramjibhai Patel (Supra). With greatest respect to the Hon'ble Supreme Court, such order is in the peculiar facts and situation of the aforesaid case.

In the case of Gurmit Singh Bhatia (Supra), eventually the application for impleadment was dismissed.

Hence, there is no ground to interfere.

Accordingly, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

24.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No