

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

CR No.6391 of 2019(O&M)

Date of decision: 27.1.2020

Bhopal Singh Yadav

.....Petitioner

VERSUS

Krishan Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Jain, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 20.09.2019 (Annexure P-5) passed by the Civil Judge (Junior Division), Rewari whereby application filed by the petitioner under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for impleadment as defendant has been dismissed.

Krishan Kumar – respondent No.1 filed suit for specific performance of contract of sale in respect of plot No.85 DEF, Sector 18, Rewari measuring 220.50 square meters on the basis of agreement dated 27.05.2015. It is averred that Wazir Singh – defendant No.1 therein agreed to sell aforesaid property for Rs.24,50,000/- out of which Rs.23 lakhs was paid in cash as earnest money. He (plaintiff) agreed to sell the disputed plot to Shishpal (defendant No.2 therein) in December 2007 for consideration of Rs.37 lakhs, received advance money of Rs.8,60,000/- as per terms and conditions of the agreement. The respondent/plaintiff got

applied for transfer permission of plot in question from defendant No.1 in favour of defendant No.2 in the office of defendant No.3. Defendant No.1 was bound to pay balance sale consideration of Rs.28.40 lakhs to plaintiff after re-allotment of plot in question. Defendant No.3 sanctioned transfer permission in favour of defendant No.2 on 29.12.2017 after due compliance of necessary conditions and formalities by Wazir Singh – defendant No.1, allottee of the plot in question. Later, defendant No.1 moved an application to defendant No.3 to stop re-allotment of plot in question in the name of defendant No.2.

The petitioner filed application for impleadment by invoking Order 1 Rule 10 read with Section 151 CPC (Annexure P-2) on the averments that defendant No.1 executed agreement to sell in favour of applicant on 16.11.2018 for Rs.18,25,000/- and a sum of Rs.7,55,000/- was received as earnest money by him. Defendant No.1 informed that civil suit titled Wazir Singh Vs. Shishpal etc is pending in the Civil Court at Rewari and the same shall be withdrawn and thereafter the property would be got transferred from the office of HUDA in favour of the petitioner and later to execute the sale deed after completing all formalities of HUDA. It is argued with vehemence that since the petitioner has acquired a semblance of title in the suit property, he is entitle to be impleaded as a party on array of defendants, in order to protect his interest. For this purpose, support has been drawn from judgment of Hon'ble the Supreme Court **Robin Ramjibhai Patel Vs. Anandibai Rama @ Rajaram Pawar and others, 2017(1) RCR (Civil) 170**, Division Bench judgment of Bombay High Court **Shri Swastik Developers and others Vs. Saket Kumar Jain and another, 2013(33) RCR (Civil) 568** and Division Bench judgment of

Rajasthan High Court **Mool Chand Bothra Vs. Additional District Judge and others, 2010(7) RCR (Civil) 2950.**

I have heard counsel for the petitioner but find that petition is devoid of substance and merits outright rejection.

The controversy raised in the present petition is squarely covered against the petitioner in view of judgment of Hon'ble the Supreme Court **Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and others, (2008) 10 SCC 708**, a detailed reference whereof has been made in paras 4 to 6 of judgment of Hon'ble the Supreme Court in **Robin Ramjibhai Patel's case** (supra). A relevant extract from paras 4 to 6 therefrom, is quoted thus:-

“4. In reply learned counsel for the respondent nos. 6 to 8 submitted that as per allegations made by the appellant these respondents have only entered into registered agreement of sale and therefore no rights have yet been created in favour of the alleged subsequent purchasers in the ten flats on the suit property. Learned counsel has relied heavily upon a judgment by a Division Bench of this Court in the case of **Ramesh Chandra Pattnaik v. Pushpendra Kumari & Ors. (2008) 10 SCC 708** to submit that the persons sought to be impleaded are not at all necessary parties.

5. First we shall consider the judgment in Ramesh Chandra Pattnaik's case (supra). In that case, the appellant-plaintiff who had filed the suit for specific performance of an agreement of sale and had also sought permanent injunction to restrain the proposed vendors from interfering with the

possession, had resisted the claim of a subsequent purchaser seeking impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908 (in short 'the CPC'). In spite of such opposition, the prayer for impleadment was allowed and the High Court did not interfere. Then the plaintiff moved this Court and the appeal by leave was allowed by setting aside the orders and dismissing the application for impleadment. In such factual scenario, the court clearly accepted the privilege of the plaintiff as to what shall be the scope of the suit and who should be allowed to intervene as defendant. With respect to claim of the subsequent agreement of sale to respondent no. 10, the Court observed in paragraph 6 of Ramesh Chandra Pattnaik's case (supra)as under:

“Respondent 10 is alleged to have entered into an agreement with Respondent 1 on 15.11.1984 for sale of the property, which is the subject matter of the suit filed by the petitioner. In respect of such an agreement, Respondent 10, could have filed a suit for specific performance but as stated by the learned counsel appearing for the parties, no such suit has been filed. In our opinion Respondent 10 was not at all a necessary party for determination of the genuineness or otherwise of the agreement of sale which is said to have been entered into between the petitioner and respondent 1.”

6. In our considered view the respondent no. 10 in that case could not have a better claim than his proposed vendors who

were already defendants and hence when opposed by the Plaintiff, the prayer for impleadment at the instance of such subsequent purchaser was rightly rejected by this court by observing that such a subsequent agreement holder could have filed a suit for a specific performance if he had any such rights.”

In para 8 of the same very judgment, it has been held that this Court accepted the status of dominus litus of the plaintiff and proceeded to hold that if the plaintiff did not want to joint the rival claimants as defendant in the pending suit, the risk was totally of the plaintiff and he cannot be forced to join them as party defendant.

In **Robin Ramjibhai Patel's case** (supra), the application for impleadment of respondents No.6 to 8 in whose favour registered agreements were executed in the month of April 2012 during pendency of suit filed by the plaintiff/appellant in which order of status quo was passed on 29.02.2012, filed by plaintiff was contested by those respondents on the premise that there was only an agreement in their favour and they have not acquired title in the suit property. The judgment in **Ramesh Chandra Pattnaik's case** (supra) was relied upon by counsel for respondents No.6 to 8 therein but the Courts distinguished that judgment by holding in para 8 with regard to status of dominus litus of the plaintiff. In the given circumstances, the petitioner cannot derive any advantage to his contention from what has been held in **Robin Ramjibhai Patel's case** (supra). Similarly, Division Bench judgment of Bombay High Court in **Shri Swastik Developers and others case** (supra) and that of Rajasthan High Court in **Mool Chand Bothra's case** (supra) have got no bearing on the

facts of the case at hand in view of their distinctive facts. In **Shri Swastik Developers and others case** (supra), a Division Bench of Bombay High Court was not dealing with correctness or legality of an order whereby application for impleadment of an additional party was allowed but the Court was seized of the issue of amendment of the plaint after impleadment of defendant No.3 as party to suit.

The petitioner neither can force the respondent/plaintiff to litigate with a party against whom he is not claiming any relief nor whose presence is not required for passing an effective decree. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Kasturi Vs. Iyyamperumal and others, 2005 (2) RCR (Civil) 691**. Analyzed from any angle, I do not find an error much less illegality in the impugned order warranting intervention in exercise of extra-ordinary jurisdiction.

Before parting with this order, it is pertinent to mention that the trial Court has made reference to judgment of Hon'ble the Supreme Court **Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and another, 2011 (4) RCR (Civil) 669** but it appears that the said judgment is not relevant in the context of present controversy.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

JANUARY 27, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no