

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

**Civil Revision No.7026 of 2019 (O&M)
Date of Decision: 11.09.2020**

Ankush Anand

.....Petitioner

Vs

Ram Kishan Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sapan Dhir, Advocate
for the petitioner.

Mr. A.M. Dar, Advocate
for respondent No.1

Mr. Lalit Thakur, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner has assailed the order dated 05.10.2019 passed by the Addl. Civil Judge (Sr. Divn.) Chandigarh vide which the application under Order 1 Rule 10 read with Section 151 CPC filed by him was dismissed.

[3]. Plaintiff/respondent No.1 filed a suit for specific performance of the agreements to sell dated 03.10.2017 and 28.09.2015, for declaration and mandatory injunction against

the defendant/respondent No.2. As per pleadings in the plaint, the plaintiff submitted that he being Managing Director of AMCIPI Electronics Pvt. Ltd., has a legal right to file the suit. A memorandum of understanding was executed between the plaintiff and defendant on 29.07.2008 vide which defendant agreed to sell 5570 shares i.e. equal to 33% of the total shares of company known as VED Sons Engineer Pvt. Ltd., against consideration of Rs.12,33,33,333/-. Plaintiff further submitted that in the property owned by VED Sons Engineer Pvt. Ltd., defendant is one of the share holders and holds share to the extent of 33%. He entered into an agreement to sell in respect of his share only. There are numerous orders from the different Courts, but those orders do not create any impediment for the defendant to dispose off his share, of course subject to final determination of the liquidation proceedings as the plaintiff is nowhere in picture in all those legal proceedings. The prayer clause in the suit reads as under:-

“In the premises it is therefore prayed to meet the ends of justice the plaint be accepted and by issuance of decree of specific performance in favour of the plaintiff and against the defendant in respect of 33% of share i.e. sell 5570 No. of shares i.e. equal to 33% i.e. of the total share of the property VED Sons Engineer Pvt. Ltd. or Anand theatres situated at Sector-17, Chandigarh.

And declaration, thereby declaring the plaintiff to

be entitled to usufruct the fruits of agreements to sell in respect of the property consisting of 33% sell 5570 No. of shares i.e. equal to 33% situated at sector 17, Chandigarh known as VED Sons Engineer Pvt. Ltd. or Anand theatres and further declaring the plaintiff to have assumed the status as the prospective owner in terms of the agreements to sell as referred to hereinabove and by issuance of decree of Mandatory Injunction commanding the defendant to effect sale deed in favour of the plaintiff in respect of the 33% of share i.e. 33% sell 5570 No. of shares i.e. equal to 33% situated at Sector 17, Chandigarh known as VED Sons Engineer Pvt. Ltd. or Anand theatres situated at Sector 17, Chandigarh.

The Hon'ble Court may pass any other appropriate decree or order as warranted in the circumstances of the case.”

[4]. Defendant/respondent No.2 Subhash Anand filed a consenting written statement by pleading that the defendant does not want to press any issue qua pleadings raised by the plaintiff in the plaint and prayed that the Court may pass an appropriate order as per pleadings of the parties. Since the parties were not in issue, therefore, an application under Order 12 Rule 6 read with Order 15 CPC was filed by the plaintiff for passing the decree in favour of the plaintiff. In the reply to the said application, defendant Subhash Chand submitted no objection. An application under Order 1 Rule 10 read with Section 151 CPC was filed by Ashok Anand for impleading himself as defendant No.2 in the suit on the ground that the suit

is collusive in nature. The share of defendant Subhash Anand is in one company namely VED Sons Engineers Private Limited which is under liquidation. The Company was incorporated as a private limited company with the applicant Ashok Anand, defendant Subhash Anand and their mother late Smt. Raj Rani Anand as shareholders of the company. Shares of late Smt. Raj Rani Anand were ultimately devolved upon Smt. Aruna Anand wife of applicant Ashok Anand through a registered Will. The applicant Ashok Anand further contended that according to Articles, there is a restriction qua the right to transfer the shares. Article 5 of the Articles of Association contemplates that shares cannot be transferred without the same being offered to the existing shareholders and the existing shareholders have the right of pre-emption. Applicant Ashok Anand pleaded himself to be necessary and proper party in the suit and prayed for his impleadment as party/defendant No.2.

[5]. During pendency of the said application, Ashok Anand died on 27.04.2018 leaving behind Aruna Anand (wife), Ashish Anand and Ankush Anand (sons) and Ambika Anand (daughter), who were to succeed the estate of deceased Ashok Anand. An application under Order 22 Rule 4 read with Section 151 CPC was filed for impleadment of the aforesaid legal heirs of Ashok Anand on 11.10.2018. The Addl. Civil Judge (Sr. Divn.)

Chandigarh disposed of the application vide order dated 08.01.2019 on the ground that Order 22 Rule 4 CPC would apply only in case of existing defendant. The applicant Ashok Anand was never impleaded and he died during pendency of his own application under Order 1 Rule 10 CPC. The application under Order 22 Rule 4 CPC was dismissed being not maintainable and the application under Order 1 Rule 10 CPC was disposed of having become infructuous. However, the legal heirs of Ashok Anand were held to be at liberty to move independent application under Order 1 Rule 10 CPC in accordance with law. This is how the application under Order 1 Rule 10 read with Section 151 CPC was filed by one of legal heir namely Ankush Anand to be impleaded as defendant No.2 in the suit.

[6]. Petitioner pleaded in the application that plaintiff and defendant No.1 have filed a collusive suit for specific performance based on agreements to sell vide which defendant agreed to sell his shares in the Company namely VED sons Engineers Private Limited which is under liquidation. Father of applicant was one of the shareholders in the Company. His family has bulk of shares as the shares belonging to Smt. Raj Rani have also devolved upon Smt. Aruna Anand mother of the petitioner by means of registered Will. Petitioner made

reference to Article 5 of the Articles of Association which contemplates that the shares cannot be transferred without the same being offered to existing shareholders and the existing shareholders have the right of pre-emption.

[7]. The Addl. Civil Judge (Sr. Divn.) Chandigarh vide order dated 05.10.2019 dismissed the application on the ground that the petitioner is neither a necessary nor property party to be impleaded in a suit for specific performance. The petitioner has no cause of action in the suit and there is no infringement of his legal right in any manner. Petitioner is not privy to any Article of Association between the defendant and plaintiff. Agreement to sell was strictly in relation to the shares of the defendant to the extent of 33% only. Co-sharer is competent to sell his shares subject to ultimate partition between the parties. The vendee would step into shoes of original co-sharer to the extent of his defined shares. Petitioner is stranger to the agreement between plaintiff and the defendant. Petitioner claimed that his father had interest in the remaining 67% shareholding of the Company. Defendant had 1/3rd share in the Company and had agreed to sell said share to the plaintiff. There may be dispute between the defendant and the petitioner, who is representing the other legal representatives of Ashok Anand as well.

[8]. The Addl. Civil Judge (Sr. Divn.) Chandigarh held that

no relief has been claimed against the petitioner and an effective decree can be passed in the absence of petitioner. Petitioner has no legal right or interest in the subject matter of the litigation. Pending liquidation proceedings are in the knowledge of the petitioner and any interest of the defendant in the suit property as determined by the official liquidator would be received by the plaintiff and he would be bound by the decision of the official liquidator. Ultimately the Court held that the petitioner is neither a necessary nor a proper party for being impleaded as party defendant in the suit.

[9]. Learned counsel for the petitioner by relying upon **Sumtibai & others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors., 2007(4) R.C.R. (Civil) 524; Thomson Press (India) Ltd., vs. Nanak Builders & Investors P. Ltd. and others, 2013(2) R.C.R. (Civil) 875; Baluram vs. P. Chellathangam and others, 2015(13) SCC 579; Harbans Singh vs. Badan Singh and another, 2010(9) R.C.R. (Civil) 934; Amit Uppal vs. Surinder Mohan Arora and another, 2006(4) R.C.R. (Civil) 637; Parminder Kaur vs. Shamsher Singh and another, 2015(9) R.C.R. (Civil) 155; Ranjit Singh vs. Ashok Kumar Jain and others, 2015(48) R.C.R. (Civil) 888; Natasha Dalip Singh and another vs. Michael Tony Ferns and others, 2019(1) CivillJ 6; Smt. Santosh vs. Smt.**

Mewa and others, 2017(5) R.C.R. (Civil) 49 and **Jaswinder Kaur vs. Bhajan Kaur and others, 2019 AIR (Punjab) 36**

submitted that 3rd party can be impleaded in the suit where 3rd party shows some semblance of title or interest in the property. Even in a case for specific performance vendee *lis pendence* can be impleaded as necessary party being assignee by sale. The 3rd party having some semblance of interest in the property is a necessary party in order to avoid multiplicity of litigation and in order to decide the suit in a more effective manner. The presence of the petitioner would definitely enable the Court to decide the suit completely and in more effective manner.

[10]. Per contra, learned counsel for the respondent No.1 submitted that present revision petition under Article 227 of the Constitution of India is not maintainable. Secondly the petitioner has no interest in the suit property and does not satisfy the mandatory tests for being impleaded as party defendant in the suit. There must be a right to some relief against such party in respect of the controversy involved in the proceedings and no effective decree can be passed in the absence of such party. Merely because the petitioner is one of the co-sharers having succeeded some share from his father *ipso facto* will not cloth him with the status of necessary and proper party in a suit for specific performance, which is strictly confined to the shares of

the defendant. The scope of specific performance cannot be enlarged to a suit for title and possession which is impermissible in law. Reliance has been placed upon **Civil Appeal No.7764 of 2019 arising out of SLP(C) No.26055 of 2018** titled **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. vs. Tuticorin Educational Society & Ors.,** decided on 03.10.2019.

[11]. I have considered the submissions made by learned counsel for the parties and have gone through the material produced on record.

[12]. Admittedly, liquidation proceedings are pending with the Company Board. First of all, this Court would like to answer the objection raised by learned counsel for the respondent No.1 qua maintainability of the present revision petition under Article 227 of the Constitution of India. The order passed in the application under Order 1 Rule 10 CPC is not appealable in terms of Order 43 Rule 1 CPC. From a bare reading of the expression “all the questions involved in the suit” used in Order 1 Rule 10(2) CPC, it is abundantly clear that the legislature clearly meant that only the controversy as raised between the parties to the litigation must be gone into i.e. the controversy with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversy which may arise between the

plaintiffs or the defendants *inter se* or question between the parties to the suit and a 3rd party. No revision lies against an interlocutory order which does not finally decides the *lis*. The order can be challenged by way of petition under Article 227 of the Constitution of India. Reference can be made to **Municipal Corporation of Hyderabad vs. Philomena Education Foundation of India, AIR 2008(NOC) 885 (AP) (DB).**

[13]. In **Shiv Shakti Coop. Housing Society, Nagpur vs. M/s Swaraj Developers, 2003(2) RCR (Civil) 676 (SC)**, the Hon'ble Apex Court was dealing with the effect of amendment under Section 115 CPC which was made by Amendment Act No.46 of 1999 w.e.f. 01.07.2002. The consideration was on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceedings. If the answer is 'yes', then the revision is maintainable. On the contrary, if the answer is 'no', then the revision is not maintainable. If the order is of interim nature and does not finally decide the *lis*, the revision will not be maintainable. The Court held that even if, the revision is not maintainable, there cannot be a bar on challenge being made under Article 227 of the Constitution of India if the order is found to be patently illegal and suffered with jurisdictional error or a manifest justice has been caused to the party which is not capable of correction at

any later stage of proceedings. In **Surya Dev Rai vs. Ram Chander Rai, 2004(1) RCR (Civil) 147 (SC)**, it was held by the Hon'ble Apex Court that supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is to keep the subordinate Courts within their bounds. Jurisdiction of High Court to issue writ of certiorari under Article 226 of the Constitution of India and supervisory writs are almost the same. The scope of Article 227 of Constitution of India is much wider in exercise of supervisory jurisdiction over its subordinate Courts. Under Article 226 of the Constitution of India, the writ Court cannot substitute its own orders, whereas under Article 226 of the Constitution of India, it can pass and substitute any appropriate orders. Jurisdiction of the High Court under Article 226/227 of the Constitution of India cannot be tied down in a strait-jacket formula. Article 227 of the Constitution of India confers on every High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction excepting any Court or Tribunal constituted by or under any law relating to the armed forces. The power under Article 227 of the Constitution of India is wider in the sense that the power of superintendence is not subject to any technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar. Proceedings under

Article 226 of the Constitution of India are in exercise of the original jurisdiction of the High Court, whereas proceedings under Article 227 of the Constitution of India are not original but only supervisory. This power has to be exercised very sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority. This power can be exercised in cases of grave injustice or failure of justice such as when the Court or Tribunal has assumed a jurisdiction which it does not have, or has failed to exercise a jurisdiction which it does have, such failure has occasioned a failure of justice and when the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction. After dilating upon the amendment in Section 115 CPC, the Court held that the curtailment of revisional jurisdiction of the High Court does not take away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a Civil Court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution of India is taken away. However, the exercise of power under Article 227 of the Constitution of India is subject to rules of self discipline and practice.

[14]. The view expressed in aforesaid **Surya Dev Rai's case** (supra) was re-considered by the Hon'ble Apex Court in **Radhey**

Shyam and another vs. Chhabi Nath and others, 2015(2)

RCR (Civil) 606 and it was held that judicial orders of the Civil Courts are not amenable to a writ of certiorari under Article 226 of the Constitution of India. The scope of Article 227 of the Constitution of India is different from Article 226 of the Constitution of India. It was held that there are no precedents for the High Courts to issue writs to subordinate Courts. Control of working of subordinate Courts in dealing with their judicial orders is exercised by way of power of superintendence under Article 227 of the Constitution of India. To that extent, the view expressed in Surya Dev Rai's case (supra) was overruled and it was held that all Courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227 of the Constitution of India. Writ jurisdiction is constitutionally conferred on all High Courts.

[15]. The view expressed by the Hon'ble Apex Court in **Sadhana Lodh vs. National Insurance Company Limited, (2003) 3 SCC 524** in the context of amendment under Section 115 CPC was relied by the Hon'ble Apex Court in **Radhey Shyam and another's** case (supra) wherein the ratio of **Surya Dev Rai's** case (supra) was partly overruled to the extent of amenability of judicial orders of the Civil Courts in writ jurisdiction under Article 226 of the Constitution of India.

[16]. The nature of order passed in the instant case by the trial Court cannot be termed as an interlocutory order as the same has decided the right of the petitioner finally by concluding that he is not necessary and property party in the suit. This fact if read in conjunction with the provisions of Order 43 Rule 1 CPC would show that the order is not appealable in nature. Even if the order is considered to be interlocutory order, a person cannot be remediless. Where there is a right, there has to be a remedy to redress the grievance in case the Court has not exercised the jurisdiction vested in it. *Ubi jus ibi remedium* applies to the present set of circumstances. In view of Order 43 Rule 1 CPC, no alternative remedy is available to the petitioner. There is no dispute with regard to the proposition involved in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors.'s** case (supra), but the same does not apply to the facts and circumstances of the present case. Order passed under Order 1 Rule 10 CPC is not appealable in terms of Order 43 Rule 1 CPC. The aforesaid case proceeded on the case where the party was having alternative remedy under the Code of Civil Procedure.

In view of aforesaid position, it can be concluded that revision petition under Article 227 of the Constitution of India is maintainable in view of facts and circumstances of the case.

[17]. The second argument of learned counsel for the respondent No.1 is on merits. Evidently, the petitioner is not privy to the agreement to sell. Plaintiff is not privy to any memorandum of understanding between the shareholders of VED Sons Engineers Private Limited. It is a case of agreement to sell in respect of 33% shares of the defendant in which other co-sharers have no right, title or interest in any manner. The specification of shares is however subject to division in a lawful manner.

[18]. Liquidation proceedings are also fixed before the Company Law Board. For impleading a party 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 petitioner/proposed defendant, no effective adjudication can be done by the trial Court. In a suit for specific performance, necessary party is that person in whose absence no decree can be passed. Proper party is that person whose presence before the Court would be necessary in order to enable the Court to decide and adjudicate the lis in an effective manner. A person stranger to the agreement to sell cannot be termed as necessary and appropriate party as collateral 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.

[19]. The scope of a suit for specific performance cannot permit third party claiming to be joint owner in the property in question. A stranger 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.**

[20]. The ratio of **Kasturi's case** (supra) has been reiterated by the Hon'ble Apex Court in **Civil Appeal Nos.5522-5523 of 2019** titled **Gurmit Singh Bhatia vs. Kiran Kant Robinson and others** decided on 17.07.2019. The plaintiff is a *dominus litis* and he cannot be compelled to contest the suit against a person with whom, he does not wish to contest. In **Kasturi's case** (supra), the Court held that the question of jurisdiction of Court to invoke Order 1 Rule 10 CPC to add a party, who is not made a party in the suit by the plaintiff, shall not arise unless a party

proposed to be added has direct and legal interest in the controversy involved in the suit. Both the tests which have been discussed in the preceding paras are to be satisfied.

[21]. The party claiming independent title and possession adverse to the title of the vendor and not on the basis of agreement/contract, is not proper party and if said party is impleaded the scope of the suit for specific performance shall be enlarged and it will become a suit for title and it will involve intricate question of title which is not permissible in law. A stranger to the suit cannot be added/impleaded in a suit for specific performance merely in order to find out, who is in possession of the agreed property or to avoid multiplicity of the suits. A stranger to agreement cannot be impleaded as a party so as to convert a suit of one character into a suit of different character. It is only an assignee by sale in a case of specific performance who can be impleaded as party defendant. Section 19(b) of the Specific Relief Act enables the assignee by sale in a suit for specific performance to be impleaded as party. The aforesaid exception has been carved out in view of nature of suit being a specific performance, wherein the assignee by sale can protect his title and join the proceedings in view of law laid down in **Thomson Press (India) Ltd.'s** case (supra). It is a settled principle of law that doctrine of *lis pendens* is a doctrine

based on the ground that it is necessary for the administration of justice that the decision of a Court in a suit should be binding not only on the litigating parties, but on those who derive title *pendente lite*. This provision does not intend to annul the conveyance or the transfer otherwise to render it subservient to the right of a party to a litigation.

[22]. For the reasons recorded hereinabove, I find that the impugned order does not suffer with any error of jurisdiction. This revision petition is found to be devoid of merits and the same is accordingly dismissed.

September 11, 2020
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No