

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 936 of 2019

- Smt. Manpreet Kour Chabada W/o Ramandeep Singh Chabada, Aged About 33 Years, By Caste Sikh, R/o Ward No.9, Near Purana Gurudwara, Manendragarh, Thana and Tahsil Manendragarh, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh (Propose Defendant)

---- Petitioner

Versus

1. Arvind Shrivastava S/o Late Shivmurat Lal Shrivastava, Aged About 38 Years, Karta Arvind Shrivastava and Sons, R/o Ward No.13, Near Joda Talab, Purani Basti, Manendragarh, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
2. Smt. Babita Shrivastava W/o Arvind Shrivastava, Aged About 36 Years, R/o Ward No.13, Near Joda Talab, Purani Basti, Manendragarh, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
3. Bhuneshwar S/o Late Jagatram, Aged About 24 Years, By Caste Panika, R/o Village Dhavalpur, Thana Jhagrakhand, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
4. Sunderlal S/o Late Jagatram, Aged About 18 Years, By Caste Panika, R/o Village Dhavalpur, Thana Jhagrakhand, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
5. The Collector Koriya Baikunthpur, District Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner – Shri Parag Kotecha, Advocate.

For Respondents No.1 and 2 – Shri Shakti Raj Sinha, Advocate.

For State/Respondent No.5 – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-02-2021

Heard.

1. This petition has been brought praying to invoke supervisory jurisdiction of this Court under Article 227 of the Constitution of India and quash the impugned order dated 14-10-2019 passed by the Court of Second Additional District Judge Manendragarh to implead the petitioner as a party in that case.
2. It is submitted by learned counsel for the petitioner that the civil suit has

been filed by the private respondents No.1 and 2 against respondent No.3, 4 and 5 praying for relief of specific performance of contract. The petitioner was not a party to that contract and therefore, the petitioner has no interest in that civil suit.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Kasturi Vs. Iyyamperumal and Ors.**, AIR 2005 SC 2813.

It is submitted that the petitioner being a stranger to the contract could not have been impleaded as a necessary party. Hence, the impugned order is erroneous, which is liable to be quashed. It is prayed that this petition be allowed and relief be granted to the petitioner.

3. Learned counsel for respondents No.1 and 2 opposes the submission and submits that initially the suit was filed for specific performance of contract, but in the written statement filed by respondents No.2 and 3, it is pleaded that the suit property has been sold by a sale deed dated 09-11-2015 to the present petitioner and she is in possession. It is also pleaded that purchaser of the suit property is a necessary party. Hence, on the basis of this pleading, respondents No.1 and 2 have moved application for impleading the petitioner as party and they have also separately moved the application for amending the plaint.

Section 52 of The Transfer of Property Act, 1882 clearly puts a bar on transfer of property regarding which any litigation is pending. Therefore, the impleadment of the petitioner as a party in the civil suit is necessary for effective decision and further the interest of the petitioner is also involved which she is required to defend her interest in the civil suit. Hence, learned trial Court has not committed any error in passing the impugned order. Therefore, the petition be dismissed.

4. Learned counsel for the State/respondent No.5 opposes the submission

and submits that appropriate orders be passed by this Court.

5. Considered on the submissions.

6. In the case of **Kasturi Vs. Iyyamperumal and Ors.** (supra) it has been observed by the Court, that it would be open to the Court to decide the question of possession of third party on the suit property after decision of the lis regarding the enforceability of the contract between parties. In that case plaintiff of the suit had filed suit for specific performance in which the parties filed application to be impleaded as defendants to set up a claim of independent title and possession over the contracted property. Therefore, it was held by Hon'ble the Supreme Court in that case, that plaintiff is dominus litis in the suit and he cannot be forced to add parties against whom he does not want any relief. It is a different case in which the plaintiffs/respondents No.1 and 2 are those persons who have prayed to implead the petitioner as party. Hence, the consideration has to be done in accordance with facts present in this case.

7. Although initially the suit was filed by respondent No.1 and 2 for relief of specific performance of the contract against the defendants, who are respondent No.3 and 4, but the pleading of the respondent No.3 and 4 in their written statement is very clear that the suit property has been sold to this petitioner during pendency of the civil suit. Hence, it is a subsequent event and therefore because of this situation plaintiffs/respondent No.1 and 2 would not be able to get relief in case they succeed in the civil suit.

8. Order 2 Rule 2 of the CPC provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action available to him. And further, Rule 3 of Order 2 of the CPC provides for Joinder of causes of action against the same defendant or the defendants.

After this discovery that the suit property has been sold out during pendency of the suit, cause of action has now become available to the

plaintiffs/respondents No.1 and 2 against the petitioner also for challenging the sale deed in her favour and also for recovery of possession on her.

9. Section 19 of the Specific Relief Act also provides, that specific performance of contract may be enforced against any other person claiming title arising subsequently to the contract. Position of the petitioner fits-in this provision. Further, Section 22 of the Specific Relief Act also provides that apart from the relief of specific performance of contract plaintiff can also pray for relief of possession, partition etc. in addition to such performance of contract.

Hence, in view of the factual situation which is not denied that the petitioner is subsequent purchaser of the suit property during pendency of the civil suit and that the plaintiffs/respondents No.1 and 2 have entitlement to join the cause of action which is now become available to them and also their entitlement to seek relief under the provisions of law, the order of impleading the petitioner as party cannot be said to be erroneous order. Hence, I am of this view that the impugned order does not suffer any infirmity, which has been correctly passed and there is no reason for this Court to exercise the supervisory jurisdiction for the same. Therefore, this petition is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge