

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

**CR No.5976 of 2016 (O&M)
Date of decision: 02.08.2022**

Satnam Singh

....Petitioner

Versus

Bachint Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rishabh Gupta, Advocate
for the petitioner.

None for the respondents.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 05.07.2016 passed by the trial Court vide which the application filed by the applicant/respondent No.3 Bhajan Kaur was under Order 1 Rule 10 CPC was allowed.

Brief facts of the case are that the petitioner Satnam Singh has filed a suit for possession by way of specific performance of agreement to sell dated 30.11.2004, executed by defendant No.1 Bachint Singh and defendant No.2 Harjinder Singh qua the suit land.

During the pendency of the said suit, the aforesaid respondent No.3 – Bhajan Kaur filed an application under Order 1 Rule 10 read with Section 151 CPC for impleading her as a defendant on the ground that she is power of attorney holder of defendants No.1 and 2 and has already filed a suit for declaration that the alleged agreement to sell dated 30.11.2004 is illegal, null and void and liable to be set-aside.

The said suit is pending before the Civil Court at Hoshiarpur. It is

further stated that there was some settlement with the plaintiff and it was undertaken that the present suit will be withdrawn, however, the same is being contested.

The petitioner contested the application by way of filing the reply and pleaded that the applicant herself executed the sale deed dated 05.02.2010 for consideration qua 17 kanals of land, on the basis of the agreement to sell dated 30.11.2004 and she also made some admissions on 27.05.2011 and by filing this application, she cannot resile from the benefit she has already taken from the agreement to sell dated 30.11.2004. It is also stated that the said sale deed is qua 17 kanals whereas the suit is filed qua 57 kanals of the land.

The trial Court vide impugned order dated 05.07.2016, allowed the application only on the ground that the suit is at the initial stage and no evidence of the plaintiff has come forward and therefore, by impleading Bhajan Kaur, who is attorney holder of defendants No.1 and 2, as a party under Order 1 Rule 10 CPC will help the Court to adjudicate the suit in a proper manner.

Counsel for the petitioner has argued that the trial Court has failed to appreciate the fact that it is the plaintiff, who is *dominus litus* and to see against whom the suit is filed and there is no prayer in the suit for specific performance filed by the petitioner against the applicant/respondent No.3 Bhajan Kaur. It is further submitted that even Bhajan Kaur has independently filed a suit, which is also pending before the Civil Court challenging the same agreement to sell and the fact whether the agreement to sell executed by defendants No.1 and 2 in favour of the petitioner/plaintiff is valid or not, will be seen in the said

suit and the same cannot be adjudicated upon in this case.

Respondents/defendants No.1 and 2 have not come forward to contest the same and there is no representation on behalf of respondent No.3.

After hearing the counsel for the parties, I find force in the present petition. In the plaint, the petitioner has set up a case that he may be granted the decree of possession by way of enforcement of specific performance of agreement to sell dated 30.11.2004 *qua* 57 kanals of land. The respondent No.3/Bhajan Kaur has filed an application under Order 1 Rule 10 CPC for impleading as a party on the ground that she also filed a suit challenging the said agreement to sell and therefore, she is an interested party. In para 4 of the reply, the petitioner/plaintiff has stated that on the basis of the same agreement to sell, the applicant/respondent No.3 Bhajan Kaur got the sale deed executed on 05.02.2010 for a consideration *qua* 17 kanals of land and she has also made an application in the Court under Section 151 CPC on 27.05.2011, acknowledging the said agreement to sell dated 30.11.2004 and therefore, at this stage, by moving this application, she cannot be allowed to resile from the written admission made before the Court.

Even otherwise, it is well settled principle of law that it is the plaintiff, who is a *dominus litus* and no party can be impleaded against whom no relief is prayed for in the plaint.

Accordingly, the present petition is allowed and the impugned order dated 05.07.2016, passed by the trial Court is set-aside.

However, liberty is granted to respondent No.3/Bhajan

Kaur to move an appropriate application before the District & Sessions Judge, Hoshiarpur for transfer of the suit filed by her to be heard by the same Court where the present suit is pending.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2022

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No