

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3308 of 2022
Reserved on 23.09.2022
Pronounced on 27.09.2022

Gurwinder Singh @ Gurminder Singh and anotherPetitioners

VERSUS

Rajinder Singh and anotherRespondents

CORAM: HON'BLE MR JUSTICE HARKESH MANUJA

Present:- Mr. M. L. Saggar, Senior Advocate, with
Ms. Arman Saggar, Advocate, for the petitioners.

Mr. S. S. Siwatch, Advocate and
Mr. Abhjay S. Mann, Advocate, with
Mr. Gurwinder Singh, Advocate, for respondent No.1

HARKESH MANUJA, J. (Oral)

The present Civil Revision has been filed against the order dated 01.07.2022, whereby an application under Order 1 Rule 10 CPC filed at the instance of the petitioners has been dismissed.

The facts leading to the case in hand are that a suit for specific performance, based on an agreement to sell dated 28.11.2014, came to be filed at the instance of respondent No.1 against respondent No.2. The suit was filed on 19.03.2018. During pendency of the suit, on 22.01.2021, the present petitioners moved an application under Order 1 Rule 10 CPC for being impleaded as a party, claiming themselves to be the owner of the suit land based on a registered Will dated 18.03.1991. Notice of the aforesaid application was served upon respondent No.1-plaintiff. A reply dated 21.04.2022 was filed on his behalf and it would be relevant to mention here that the petitioners happen to be real sons of

The learned trial Court vide impugned order dated 01.07.2022 has dismissed the application filed at the instance of the petitioners. In the application filed under Order 1 Rule 10 CPC, the petitioners pleaded that the land in dispute beside some other land, was owned by their grandfather Bakshish Singh along with his brother Nasib Singh.

At the time of hearing, it has been contended by learned counsel representing the petitioners that on 18.03.1991, both Bakshish Singh and Nasib Singh executed a registered Will in favour of their grandchildren including the petitioners while they were minor at that time. He further submitted that Bakshish Singh expired on 13.02.2011 whereas Nasib Singh predeceased him and mutation regarding the estate of Nasib Singh was entered at Sr. No. 1665 dated 23rd May, 2011, in favour of petitioners whereas, on the same day, a mutation number 1166 regarding the estate of Bakshish Singh was entered in favour of their father i.e., respondent No.2. It was only in 2011, when they came to know all this as well as few subsequent alienations made by their father, they filed a suit for declaration claiming ownership based on registered Will dated 18.03.1991. The said suit was filed on 10.01.2017 & the same was decreed vide judgment and decree dated 04.12.2018 wherein the validity of the registered Will dated 18.03.1991 was upheld, however, the suit was dismissed qua the relief of declaration on the ground that the same was collusive in nature between the petitioners and respondent No.2. It has been pointed out that the judgment and decree dated 04.12.2018, is already under challenge before the first appellant Court.

Based on the aforesaid facts, it has been contended on behalf of the

petitioners that since the validity of registered Will dated 18.03.1991 already

stands established in the judgment and decreed dated 04.12.2018, as such, they have got semblance of interest in the suit property and their rights would thus, be affected from the outcome of the present suit. It has also been submitted that since it is the petitioners, who are in possession of the suit property, it would even be in the interest of the respondent No.1 that they are impleaded as party for effective implementation of the decree, if any, passed in their favour. Learned counsel for the petitioners also refers to observations made by the Hon'ble Supreme Court in para-16 of case titled as ***Kasturi Vs. Iyyamperumal & Ors, 2005 (2) R.C.R.(Civil) 691***, in his support which is reproduced as under :

“.....Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In Amol Vs. Rasheed Tuck and Sons Ltd. [1956(1) All Eng. Reporter, 273] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will effect him legally.....”

On the other hand, the prayer made by the petitioners has been opposed by respondent No.1, stating that the petitioners are not party to the agreement to sell and therefore they are neither necessary nor proper parties to the suit and thus, cannot be impleaded. He further submits that being strangers to the contract, they are raising title adverse to the vendor. He also submits that respondent No.1 being *dominus litis*, cannot be compelled to contest the suit against any other party against his wish. Respondent No.1 also raises the issue of collusiveness between the petitioners and respondent No.2. He points out that the petitioners became major somewhere in 2002-03 whereas, the mutation were sanctioned in favour of their father i.e., respondent No.2 in the year 2011 i.e., much after their attaining majority, still the said registered Will was never got

enforced by them. He also points out that the agreement in question is dated 28.11.2014 whereas, the suit for declaration qua this property, based on registered Will, was filed by the petitioners on 10.01.2017 i.e. much thereafter. Learned counsel representing respondent No.1 further submits that the suit for specific performance was filed on 19.03.2018 whereas the present application under Order 1 Rule 10 CPC was filed by the petitioners on 22.01.2021. Based on the aforesaid facts, he pleads that the present application is *mala fide* and result of collusion between the petitioners and his vendor, who is respondent No.2 and is father of the petitioners, and thus, the entire purpose of filing the present application is to delay the proceedings in the suit. To support his submissions, learned counsel for respondent No.1 places reliance upon para-6 and 10 of the judgment in the case of ***Kasturi Vs. Iyyamperumal & Ors, 2005 (2) R.C.R.(Civil) 691*** and the same are reproduced here as under:

“6. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

10. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who

is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all.”

I have heard learned counsel for the parties and have gone through the records.

I don't find any merit in the present revision petition. Though based on registered Will dated 18.03.1991, followed by judgment and decree dated 04.12.2018 passed by the Court of learned Civil Judge (Jr. Divn.) SAS Nagar (Mohali), the petitioners have tried to base their claim by pointing out that once the validity of execution of registered Will in their favour qua the suit land was upheld, their non-impleadment in the present suit for specific performance filed at the instance of respondent No.1 would directly impact their interest in the suit property. I am not convinced with this submission made on behalf of the petitioners. A sequence of fact narrated here in below would show that the present application is merely an afterthought and an ingenuine effort to create impediments in the claim for specific performance made by respondent No.1 against respondent No.2. Necessary facts ascertained from the records based on

which I have derived at my aforesaid conclusions are as follows:

Sr. No.	Date	Event
(a)	18.03.1991	Registered Will executed in favour of petitioners by their grandfather while petitioners were minor.
(b)	2002-03	Petitioners became major.
(c)	13.02.2011	Petitioners' grandfather expired.
(d)	23.05.2011	Mutation No.1166 entered in the name of respondent No.2 (father) regarding the suit property owned by Bakshish Singh (grandfather).
(e)		Thereafter respondent No.2 (father) started selling agricultural land based on aforesaid mutation.
(f)	28.11.2014	Agreement to sell between respondents No.1 and 2.
(g)	25.10.2016	Target date fixed under the aforesaid agreement.
(h)	10.01.2017	Petitioners filed suit for declaration based on the Will dated 18.03.1991 against their father-respondent No.2.
(i)	10.05.2017	Issues are framed in civil suit for declaration filed by petitioners wherein their father (respondent No.2) makes a statement that he does not intend to file written statement.
(j)	19.03.2018	Present suit for specific performance filed by respondent No.1 against respondent No.2.
(k)	04.12.2018	In a non-contested suit, learned Civil Judge (Jr. Divn.), SAS Nagar, Mohali, upholds the validity of the registered Will dated 18.03.1991 in favour of petitioners, declining relief of declaration by holding the suit to be collusive in nature.
(l)	22.01.2019	Present petitioners filed an application under Order 1 Rule 10 CPC for being impleaded as defendants in the suit for specific performance.
(m)	21.04.2022	Reply to the application at the instance of respondent No.1.
(n)	01.07.2022	The impugned order was passed.

From the sequence of facts narrated hereinabove, it is pointed out

03, never ever made any effort to get the land in question transferred in their name on the basis of said Will dated 18.03.1991. It was only when their father entered into an agreement to sell with respondent No.1, a suit for declaration was filed more than two years thereafter. Further, even the present application came to be filed after almost 3 years of the pendency of the present suit for specific performance filed by respondent No.1. Even a perusal of the memo of parties filed along with the present revision petition shows that both the petitioners as well as respondent No.2 are residing in the same village and perhaps the same house, in the absence of any evidence to the contrary. The aforementioned facts lead to an irresistible conclusion that the application in hand was filed by the petitioners as a part of their *mala fide* attempt to create unnecessary impediments in disposal of the suit for specific performance filed at the instance of respondent No.1. Besides aforesaid, it is settled proposition of law that in a suit for specific performance it is the parties to an agreement or in a given case their successors in interest, who are proper and necessary parties. In the present facts and circumstances, neither any relief has been claimed by respondent No.1 against petitioners in his suit for specific performance, nor it is that an effective decree cannot be passed in their absence.

Further, it is respondent No.1-plaintiff, who is the *dominus litis* and as such, he can't be asked to contest a suit against any person in opposition to his own wish. This may however, be subject to that the non-impleading of any other person against the wish of plaintiff has to be at his risk. A reference in this regard can be made to the following observations from the latest judgment passed by the Hon'ble Supreme Court in case of ***Sudhamayee Pattnaik Vs.***

Bibhu Prasad Sahoo passed in ***Civil Appeal No.6370 of 202***, decided on

16.09.2022:-

“.....As per the settled position of law, the plaintiffs are the dominus litis. Unless the Court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs.....”

It may also be pointed out here that even the decree passed in favour of respondent No.1 may not affect the rights of the present petitioners being not party to the suit and in case, any need arises, they can well defend their rights invoking remedies as per law. Again, I find support from observations made in paragraph-14 of the case titled ***Kasturi Vs. Iyyamperumal & Ors, 2005 (2) R.C.R.(Civil) 691***, the relevant portion reads as under:

“It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the

contract being the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.”

In view of the discussion made hereinabove, I do not find any merit in the present revision petition and the same is, therefore, dismissed, upholding the order dated 01.07.2022 passed by the learned trial Court whereby, application filed at the instance of petitioners, invoking Order 1 Rule 10 CPC for impleading them as a party in Civil Suit No.186 of 2018 has been dismissed.

27.09.2022
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(HARKESH MANUJA)
JUDGE

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