

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

Date of decision: January 11, 2023

1. CR-3470-2018 (O&M)

Satish Jindal

....Petitioner

versus

Surinder Mohan and others

....Respondents

2. CR-3472-2018 (O&M)

Satish Jindal

....Petitioner

versus

Sachin Jindal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Abhinav Aggarwal, Advocate for the petitioner(s).

Mr. R.P. Ahluwalia, Advocate for respondent No.1.

Mr. Sunil Kumar Dhanda, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two revision petitions are being disposed of, since the controversy and issues raised therein are common. For brevity, recitals are taken from CR-3470-2018.

2. Revision petition is to set aside the impugned order dated 01.03.2018 (Annexure P-13) passed by learned Civil Judge (Junior Division), Ambala whereby application dated 29.01.2018 (Annexure P-12) under Order

1 Rules 8-A & 10(2) read with Section 151 of Code of Civil Procedure for impleading him as defendant/ party, has been dismissed.

3. Succinct factual background first as pleaded in the revision. Petitioner is sole proprietor of City Grace Shop No.5137/1, Halwai Bazar, Ambala Cantt and respondent No.1 is sole proprietor of M/s Rattan Lal Surinder Mohan, Shop No.5137, Halwai Bazar, Ambala Cantt, having his adjacent shop with the petitioner's shop. Petitioner submitted a complaint to respondent No.3-Municipal Corporation about unauthorized and illegal encroachment of respondent No.1 in front of petitioner's shop. Respondent No.3 imposed a penalty of Rs.100/- per day effective from 25.06.2015 to 31.07.2017, which came to be Rs.76,800/- upon respondent No.1. Said amount was not paid by respondent No.1. Same was later declared as arrears of Land Revenue. Respondent No.2-Collector, Ambala also issued directions to Tehsildar, Ambala to recover the said amount. Aggrieved, respondent No.1 filed a civil suit against Municipal Corporation without making petitioner as a party-defendant. During pendency of said civil suit, petitioner moved an application before learned trial Court, Ambala for impleading him as defendant/party, which was dismissed vide impugned order dated 01.03.2018 (Annexure P-13). Hence, the revision petitions.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the respondent No.1 relies on Apex Court judgment rendered in **Kasturi versus Iyyamperumal and others**, Civil Appeal No.2831 of 2005, decided on 25.04.2005. Relevant paras-12, 17 & 21 thereof read thus-

“12. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

xx xx xx

17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos. 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

xx xx xx

21. For the reasons aforesaid, in our view, the stranger to the contract, namely, the respondent Nos.1 and 4 to 11 making claim independent and adverse to the title of respondent Nos. 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party defendants in the suit for specific performance of contract for sale.”

5.1 A bare perusal of the same reveals that two tests have been held i.e., (A) for a litigant to be party to the suit, claim must be there against him, and (B) in the absence of his not being a party, in case decree is passed against him, the same could not be effective for he being not a party.

5.2 When the aforesaid tests are applied, the petitioner, who claims himself to be the owner of adjoining shop of plaintiff-respondent No.1, is unable to satisfy any of the tests. Neither any relief has been claimed against him nor it is the case that in case a decree is passed against the respondent No.3-Municipal Corporation, then the same would result in any prejudice to

the petitioner, and/ or the same would adversely result in any of his proprietary rights *qua* property in question being jeopardised.

6. Petitions are accordingly, devoid of merits and are dismissed, accordingly. However, dismissal of the revision petitions shall not preclude the petitioner for redressal of his grievance against plaintiff-respondent No.1, if any, to institute any substantive proceedings in accordance with law.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No