

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

**CR-6501-2018 (O&M)
Date of decision: 25.05.2023**

Shamsher Singh

...Petitioner

VS

Hardeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kanwar Pahul Singh, Advocate,
For the petitioner.

Mr. Naveen Bawa, Advocate,
For respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 06.09.2018 (Annexure P-1) passed by learned Civil Judge (Junior Division), Ajnala whereby an application under Order 1 Rule 10 CPC filed by respondent No.1 herein for his impleadment as defendant No.5 in the suit instituted by petitioner/plaintiff, was allowed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for specific performance against Sawinder Singh (since deceased and now represented through his legal heirs i.e., defendants No.1 to 4). Said Sawinder Singh executed an agreement to sell dated 12.03.2014 in favour of petitioner/plaintiff. Defendants No.1 to 4 appeared in the case and admitted the claim of plaintiff/petitioner herein.

2.2. During the pendency of suit, respondent No.1 herein came forward on the basis of Will dated 12.08.2017 purported to be executed by deceased Sawinder Singh in his favour and filed an application under Order 1 Rule 10 CPC for his impleadment as defendant No.5, which was though

duly opposed. However, vide impugned order dated 06.09.2018 (Annexure P-1), learned trial Court allowed the said application. Hence the instant petition by plaintiff/petitioner.

3. Learned counsel for petitioner canvasses that Sawinder Singh never executed any Will dated 12.08.2017, as set up by respondent No.1 herein. It is forged and fabricated document. The said Will was discarded by Sub Registrar, Ajnala.

3.1 He would further submit that if respondent No.1 is allowed to be impleaded in suit for specific performance filed by petitioner herein, then the nature of the suit will change to that of a title suit. He further urges that respondent No.1 can avail his own independent remedy to establish his title over suit property on the basis of Will dated 12.08.2017, as alleged.

4. Learned counsel for respondent No.1, on the other hand, strenuously opposes the petition and supports the impugned order. He would urge that defendants No.1 to 4 have actually connived with plaintiff/petitioner herein, which is quite evident from the fact that they have filed an admitted written statement. Respondent No.1 has direct interest in the suit property by virtue of Will executed by deceased Sawinder Singh in his favour.

4.1. Learned counsel for respondent No.1 further submits that learned Court below gave sound and convincing reasons in the impugned order while allowing impleadment of respondent No.1 in the suit.

5. I have heard competing arguments of learned counsel for parties and gone through the case file.

6. Trite law it is that principle of *dominus litus* envisages that a person, who is initiating legal proceedings is master of *lis* and cannot be

compelled to implead any person against whom he does not have any grievance and he does not seek any relief. Furthermore, the only ground of seeking impleadment by respondent is that *qua* suit property there is a Will purportedly executed in his favour, therefore, he needs to watch his interest. Even if it is so, nobody is taking away right of respondent No.1 to assert the so-called Will executed in his favour and he is at liberty to take steps in accordance with law to seek benefit arising therefrom.

7. The suit in question is confined *qua* transaction between plaintiff and original defendant (now represented through LRs) on the basis of an agreement to sell and, therefore, whatever be the outcome of the same, would have no bearing on the veracity of the Will in question.

8. Being so, impugned order suffers from legal infirmity and cannot be sustained and is, accordingly, set aside. The revision petition is allowed.

9. In the parting, I may also hasten to add here that it is not very clear from the record whether Sawinder Singh died before or after the filing of the suit. Be that as it may, the available record suggests that Sawinder Singh had died before filing of the suit itself. If that be so, suit filed against the dead person would be *per se* nullity at the very inception. In that context, it is irrelevant and makes no difference if legal representatives of Sawinder Singh had been impleaded, in any case, are proforma defendants/respondent No.2 (i to iv) in the present case. Accordingly, if death of Sawinder Singh had taken place before filing of the suit, it is liable to be dismissed summarily. Resultantly, that would render the application of respondent No.1 seeking impleadment is infructuous. Conversely, if Sawinder Singh was alive when suit was filed then respondent No.1 was rightly impleaded

CR-6501-2018 (O&M)

by learned trial Court. In the peculiar premise, it is left open for learned trial Court to take a fresh call, if so warranted. Setting aside of interim order vide instant appeal shall not come in the way of learned Trial Court in case it decides to take a fresh call.

10. Needless to say that respondent No.1 shall be at liberty to assert his rights in the suit property in accordance with law.

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

(ARUN MONGA)
JUDGE

25.05.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No