

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR 6751/2017(O&M)****Date of decision: 18.05.2023.****Sanjay Vyas****.....Petitioner.****Vs.****Smt. Durga Devi Vyas (since deceased) through her LRs and another****.....Respondents****CORAM HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Raghav Goel, Advocate and
 Mr. Satpal Bhasin, Advocate for the petitioner.****Mr. RK Malik, Advocate for the respondents.****Nidhi Gupta, J.**

Present revision petition has been filed by the plaintiff seeking setting aside of order dated 24.8.2017 (Annexure P-11) passed by Civil Judge (Senior Division), Sonapat whereby application filed by respondent no.2 under Order 1 Rule 10 CPC for being impleaded as defendant in the petitioner's civil suit has been allowed.

2. Brief facts of the case are that the petitioner is son of the (now deceased) respondent no.1 Smt. Durga Devi, real brother of LRs of respondent no.1, and brother-in-law of respondent no.2 herein. Subject matter of dispute in the civil suit is H.No.139, Eight Marla, Ram Nagar, Sonapat (hereinafter referred to as 'the suit property'). It is the petitioner's case that in the Family Settlement entered into between the parties, respondent no.2 had recorded her statement on 24.9.2012 to the effect that respondent no.1 Smt. Durga Devi will either alienate the suit property within three months or will fix the value

of the house and any of the two parties can purchase the same after making payment of half amount.

3. It is submitted by the ld. counsel for the petitioner that pursuant to the said Settlement, and statement dated 24.9.2012 of respondent No.2, petitioner had entered into an agreement dated 12.11.2012 with the deceased respondent no.1 whereby respondent No.1 had agreed to sell the suit property to the petitioner for a sum of Rs.60 lacs. It is stated that the petitioner had even paid earnest money of Rs.10 lacs out of total amount of Rs.60 lacs. It is submitted that the petitioner was always ready and willing to perform his part of the agreement, however, as respondent no.1 failed to execute the sale deed in favour of petitioner on target date i.e. 28.11.2013, the petitioner was constrained to file the present suit seeking specific performance of agreement dated 12.11.2012. It is submitted that the petitioner filed instant civil suit (Annexure P-3) on 22.7.2013, and in the written statement dated 24.9.2013 filed by respondent no.1 to the above said suit, the respondent no.1 duly admitted execution of the agreement to sell dated 12.11.2012 as well as receipt of earnest money of Rs.10 lacs. However, suit was contested on the ground that the petitioner was not ready and willing to perform his part of the agreement.

4. It is submitted that thereafter, issues were framed on 3.12.2013; whereafter respondent no.1 Smt. Durga Devi expired in 2015 and her LRs were duly brought on record. It is further submitted that however, her son/brother of the petitioner namely Kailash Vyas had claimed ownership over the suit property on the basis of registered Will dated 18.10.2007. Subsequently, vide order dated 9.5.2016 (Annexure P-7) both Kailash Vyas respondent no.1 (i) herein, and respondent no.1 (ii) herein-sister of the

petitioner were impleaded as parties being legal heirs of deceased Smt. Durga Devi.

5. It is stated that thereafter, on 5.9.2016 (Annexure P-9) the present application was filed by respondent no.2 under Order 1 Rule 10 CPC seeking impleadment in aforesaid civil suit (Annexure P-3) on the ground that she was owner of the suit property by way of sale deed dated 22.5.2013 executed by Smt. Durga Devi in her favour. Petitioner filed detailed reply dated 13.3.2017 (Annexure P-10) to the said application dated 5.9.2016 (Annexure P-9).

6. It is submitted that in view of the fact that Smt. Durga Devi in her written statement had admitted execution of the agreement to sell dated 12.11.2012, and the fact that the alleged sale deed dated 22.5.2013 has not been mentioned by Smt. Durga Devi in her written statement, respondent no.2 has no locus as the civil suit is for possession by way of specific performance and the respondent no.2 is a stranger to the agreement to sell dated 12.11.2012. It is submitted that impleadment of respondent no.2 herein as defendant no.2 in a suit for possession by way of specific performance will change the entire nature of the suit as it would be converted into a suit for declaration necessitating adjudication upon the validity of the alleged sale deed dated 22.5.2013, which otherwise is not subject matter of the present suit.

7. It is submitted that even otherwise it is categoric case of the petitioner that the alleged sale deed dated 22.5.2013 is a suspicious document. It is submitted that it is very odd that the respondent no.2 never produced the relied upon sale deed dated 22.5.2013 during the lifetime of Smt. Durga Devi and never came forward to be impleaded in the suit.

8. It is reiterated that Smt. Durga Devi in her written statement dated 24.9.2013 never disclosed anything about the alleged sale deed dated 22.5.2013 relied upon by respondent no.2. It is submitted that this Court needs to take notice of the fact that simultaneously husband of respondent no.2 (Kailash Vyas) respondent no.(i) herein, had filed an application on 23.7.2015 for being impleaded as legal heir of Smt. Durga Devi and had claimed ownership over the suit property by way of registered Will dated 18.10.2007. It is submitted that if there had been any registered Will dated 18.10.2007 suffered by Smt. Durga Devi in favour of Kailash Vyas then there was no occasion or need for execution of separate sale deed dated 22.5.2013 in favour of respondent no.2 and that too against payment of huge sum of Rs.53.10 lacs. It is submitted that therefore, the same is a sham transaction and has been created just to defeat the rights of the petitioner; and therefore, impleadment of respondent no.2 should not be permitted.

9. Per contra it is submitted by the ld. counsel for respondent no.2 that petitioner has been indulging in frivolous litigation and has filed numerous civil suits *inter se* the parties from time to time. It is submitted that pursuant to the agreement dated 12.11.2012 the petitioner had failed to execute the sale deed and it was in these circumstances that deceased Smt. Durga Devi had executed the present sale deed in favour of respondent no.2. It is submitted that pursuant thereto, even mutation has been sanctioned in favour of respondent no.2. It is submitted that respondent No.2 has paid a huge sum of Rs.53.10 lacs and therefore, in view of the above facts, respondent no. 2 is a necessary party to the present proceedings which cannot be resolved or effectively adjudicated upon in her absence.

11. Heard ld. counsel.

12. In order to properly appreciate the controversy at hand, it will be apposite to refer to the sequence of events/ admitted facts, in chronological order, as enumerated hereinbelow: -

1.6.2001 - Smt. Durga Devi became the owner of the House no.139, Eight Marla, Ram Nagar, Sonapat (referred to herein as 'the suit property'), through judgment and decree dated 01.06.2001 passed by Ld. Civil Judge (Sr. Divn.), Sonapat in Civil Suit no.88/2001 filed by Smt. Durga Devi/ plaintiff.

23.01.2009 - The present petitioner filed the (First) suit for declaration and permanent injunction against his mother that father of the petitioner, who died on 15.02.2001, was the owner-in-possession of the house in dispute. After his death, the plaintiff, defendant and his brother namely Kailash Vyas and sister Rajni became owners of the said house in equal share.

04.10.2009 - Smt. Durga Devi disowned the petitioner Sanjay and his wife from her property.

31.07.2012 - The (First) suit filed by the present petitioner against his mother was dismissed with finding that plaintiff/ petitioner herein, has to prove his own case; and the plaintiff has not also challenged the judgment and decree dated 01.06.2001 Ex.D1; and Ex.D2 vide which Kailash Vyas, Sanjay Vyas and Rajni had relinquished their share in the said house in favour of Durga Devi.

31.07.2012 – Meanwhile, the wife of the present petitioner had also filed a (Second) civil suit against Durga Devi, the same being Civil Suit no.321 of 2009 for declaration and permanent injunction, and same was dismissed vide judgment dated 31.07.2012.

12.11.2012 - The present petitioner entered into an Agreement to Sell with his mother Smt. Durga Devi on 12.11.2012 and gave the earnest money amount of Rs.10 lakhs out of total sale consideration of Rs.60 lakhs (Annexure P-2).

28.02.2013 – As per the above said Agreement to Sell dated 12.11.2012, the target date for performance of the contract between the parties was fixed as 28.2.2013. It is the respondents' case that on 28.02.2013 the respondent Durga Devi came in the office of the Sub-Registrar and served the affidavit. But the present petitioner did not come to the office of Sub-Registrar and failed to execute the agreement to sell.

07.03.2013 – Accordingly, the respondent Durga Devi served legal notice to the present petitioner/plaintiff.

22.05.2013 – Thereafter, Durga Devi sold her house/ the suit property to her daughter-in-law Shashi Vyas/ respondent No.2 herein, for a sale consideration of Rs.53,10,000/- and sale deed was executed on 22.05.2013 (Annexure P-8). It is not denied that pursuant thereto, mutation has also been sanctioned.

10.07.2013 - In the year 2012 itself, the present petitioner had again filed the (Third) suit, the same being Civil Suit no.1073 of 2012 against Smt. Durga Devi for declaration to the effect that he had become owner-in-possession of the house in question. The said suit was dismissed as withdrawn on 10.07.2013.

11.07.2013 – Meanwhile, the present petitioner filed an appeal against the judgment and decree dated 31.07.2012 passed in the (First) Suit; and the said Appeal was dismissed as withdrawn on 11.07.2013.

11.07.2013 - The wife of the present petitioner also filed an appeal against the judgment and decree dated 31.07.2012 passed in the (Second) Civil Suit No. 321

of 2009. However, the said Appeal filed by wife of present petitioner came to be dismissed on 11.07.2013.

22.07.2013 - The petitioner filed the present (Fourth) suit for possession (Annexure P-3), by way of specific performance of the Agreement to Sell dated 12.11.2012, against Smt. Durga Devi.

24.09.2013 - Smt. Durga Devi as defendant in aforesaid suit filed the written statement (Annexure P-4) before the Ld. Trial Court.

2015 - Durga Devi defendant in aforesaid suit died.

05.09.2016 – On 5.9.2016, application u/O1 Rule 10 CPC (Annexure P-9), was filed by the respondent no.2 herein being owner of the suit property by way of Sale Deed dated 22.5.2013 executed in her favour by Durga Devi.

30.3.2017 – Present petitioner duly filed reply (Annexure P-10), to the above application for impleadment filed by respondent No. 2.

24.08.2017 – Vide the impugned order (Annexure P-11), the Ld. Trial Court allowed the above said application u/O1 Rule 10 CPC.

29.09.2017 – By way of the present Civil Revision petition, the petitioner has challenged the above said order dated 24.08.2017. Vide interim order dated 29.09.2017 this Court has stayed operation of impugned order dated 24.08.2017.

13. It is in the above factual matrix that this Court has been called upon to adjudicate whether respondent No.2 is necessary party to the Civil Suit (Annexure P-3), filed by the petitioner.

14. Without adverting to any of the other points in dispute that may exist between the parties which will be decided in the pending Civil Suit in due course, a perusal of the record shows that the petitioner has raised some

arguable, fundamental issues that would require consideration and adjudication for a proper determination of the rights inter se the parties. It remains undisputed that respondent no.1 deceased Smt. Durga Devi vide Registered Sale Deed No. 2592 dated 22.5.2013 (Annexure P-8) had sold the suit property to respondent no.2 herein for a sale consideration of Rs.53.10 lacs. Pursuant thereto, even mutation in favour of respondent No.2 has been sanctioned. Admittedly too, the said Sale Deed was executed by Smt. Durga Devi on 22.5.2013, i.e., prior to the filing of the present suit on 22.7.2013. It has been clear case of respondent no.1 deceased Smt. Durga Devi that she had come to the office of Sub Registrar, Sonapat on 28.2.2013 to execute the sale deed on 12.11.2012, however, it was petitioner who had not turned up. Accordingly, in my view, in the present case respondent no.2 becomes a necessary party as she has staked her claim over the suit property. Any right of the parties in respect of suit property can therefore, not be decided in her absence.

15, I do not hesitate in holding that in view of the facts aforestated, the present dispute between the parties cannot be properly adjudicated upon in the absence of respondent No.2. It is well settled proposition in law that if a party is required for proper adjudication of the matter then, to save multiplicity of litigation, the said party ought to be impleaded. I am supported in my view by judgment rendered by the Hon'ble Supreme Court in **Aliji Momonji & Co. v Lalji Mavji** 1996(5) SCC 379. In said case the Lessee had filed a suit for Permanent Injunction against the Municipal Corporation, Bombay, restraining them from demolishing a portion of a building for which the corporation had issued a notice. The owners filed an application under O1 R10 which was allowed by the trial court and the said Order was upheld by the High Court.

The Hon'ble Supreme Court in paras 5 and 6 of above-referred judgment upheld

the said orders by observing that where the presence of the Respondent is necessary for complete and effectual adjudication of the dispute, even though no relief is sought, he is a proper party. Further observed that in case the demolition of the building is carried out then the rights, title and interest in the property of the landlord would be affected and hence, he is a proper party. Para 5 of the said judgment reads as under:-

“5. The controversy is no longer *res integra*. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is : whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building ? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or license would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In Ramesh Hirachand Kundanmal's case (supra), this Court had pointed out in para 18 of the judgment that the notice did not

relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *Anil Kr. Singh v. Shivnath Mishra, 1995(2) RRR 179(SC) : (1995) 3 SCC 147* similar question was answered holding that the respondent was a necessary party.

(Emphasis supplied)

16. In the present Revision petition as well, as noticed above, the dispute interse the parties cannot be effectually and effectively resolved in the absence of respondent No.2.

17. No doubt, plaintiff is dominus litus of his suit, however, in view of the facts as noticed hereinabove, in my view, the respondent No.2 is a proper and necessary party herein. In this regard, reliance may be placed upon judgment of this Court in case of **Smt. Shyama Jain v Savitri Devi, Law Finder Doc Id # 2274**, para 6 of which is reproduced hereinbelow:-

“6. Having heard learned counsel for the parties at considerable length and perusing the record with their assistance, I am of the considered opinion that this revision petition deserves to succeed and the impugned order dated 24.8.2000 passed by the Civil Judge is liable to be set aside. The averments made in the application clearly establish the interest of the applicant- petitioner inasmuch as it has been averred that she has purchased the land and constructed the house by leaving the area of 200 square yards for the passage. She has further asserted that when the plaintiff-respondent No. 1 constructed the staircase illegally obstructing the free access to the house of the applicant-petitioner, she has to file a complaint on 27.2.2000 to the Deputy Commissioner, Narnaul and the notice dated 28.2.2000 issued to plaintiff respondent No. 1 is on the basis of her complaint. Therefore, the applicant- petitioner is a necessary party and it has to be held that the order passed by the Civil Judge suffers from material irregularity and illegality. Both the judgments relied upon by the learned counsel substantially support his submission because in Nand Lal Nandwani's case (supra), this Court has taken the view that in a suit for permanent injunction restraining the Municipal Committee from demolishing the plaintiff's wall on the disputed land, the presence of the person who had his house situated opposite just across the street was considered necessary and he was held to be a person interested within the meaning of Order 1, Rule 10 of the Code. Therefore, the revision petition deserves to be allowed and the impugned

order dated 24.8.2000 is liable to be set aside”. (Emphasis supplied)

18. Reference is also made to **Rajiv Goel v Sohan Lal Khosla, Law Finder Doc Id # 208664**; and **Krishan Lal vs. Sudesh Kumari, Law Finder Doc Id # 30625**. Head note/ relevant excerpt in **Krishan Lal’s case (supra)** reads as follows:-

“Civil Procedure Code, 1908, Order 1 Rule 10
- All co-owners are necessary party to a suit to recover property belonging to them jointly - Impleading of parties
- Factors which may be considered by the Court - On re-iteration of the settled principles and in a derivative manner, it is possible to indicate certain factors which may be considered by the Court while determining such a question:-

(a) Whether the applicant is a necessary and proper party keeping in view the facts and circumstances of the case-

(b) Whether presence of such a party before the court is necessary for effectively and completely adjudicating the matter and granting a complete and effective decree to the party entitled to-

(c) Whether such a party interested would be directly affected as a result of culmination of such persons in-to decree or it would only be affected remotely, indirectly and distantly –

In addition to above, where the Court considers the presence of a party necessary or proper for complete adjudication, then it may well be considered relevant whether non-impleadment of such a party would result in avoidable multiplicity of litigation, the effort should be to implead a party rather than to force the party to go to a fresh litigation.”

19. It is relevant to mention here that the judgment passed by the Hon’ble Supreme Court of India in **Vidur Impex and Traders Pvt. Ltd. And others Vs. Tosh Apartments Pvt. Ltd. And others, 2012 (4) RCR (Civil) 308** has been relied by the counsel for the petitioner and the same is not applicable in the present case because of separate facts and circumstances. In aforesaid judgment the suit property was purchased by the defendant during the pendency of civil suit for specific performance and Court has granted interim injunction to the plaintiff. But in the present case, the respondent no.2 has purchased the above

said suit property prior to filing the suit. It is clear from the above said facts and circumstances of the present suit that the aforesaid judgment passed by the Hon’ble Supreme Court is based on different parameters.

20. In view of the factual and legal position as noticed above, present revision petition is **dismissed**.

21. Pending applications, if any, stand disposed of.

18.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No