

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 808 of 2022 (O&M)

Date of Decision: 08.11.2023

Gurdeep Singh

... Petitioner(s)

Versus

Raman Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Narender Singh Kamboj, Advocate
for the petitioner(s).

Mr. Kunal Garg, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. A suit for the grant of decree for possession by way of specific performance of the agreement to sell filed by Raman Kumar (respondent herein) against Dharam Pal is pending before the trial Court. Dharam Pal (defendant No.1) is stated to be missing for some time. He was proceeded against *ex parte* before the trial Court on 24.07.2020. Dharam Pal's son, namely Gurdeep Singh filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") with a prayer to implead him as a party to the suit. The trial Court has dismissed the same on the ground that he is a stranger to the agreement to sell.

2. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

3. The learned counsel representing the petitioner contends that the petitioner is not a stranger to the agreement to sell as he is a representative of his father who is missing for quite some time. He submits that the petitioner is residing in the suit property as a residential house has

been constructed thereon. The learned counsel further submits that if he is

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not brought on record as representative, an *ex parte* decree would be passed against the petitioner.

4. On the other hand, the learned counsel representing the respondent submits that the petitioner is not a signatory to the agreement to sell, therefore, he cannot be impleaded as a party. He further submits that the missing report of Dharam Pal was filed on 25.05.2019, whereas the suit was filed on 07.07.2020.

5. This Court has considered the submissions. In the opinion of this Court, the trial court has overlooked Section 146 of CPC which provides for the Court to permit the parties to prosecute or defend a suit through their representatives. In this case, the defendant No.1 is alleged to have entered into an agreement to sell. He is reported to be missing. He has already been proceeded against *ex aprte*. If the petitioner is not permitted to be impleaded as a representative of his father, an *ex parte* decree is likely to be passed. The petitioner is required to be given an opportunity to contest the suit particularly when his father is missing.

6. Keeping in view the aforesaid facts and discussion, the present revision petition is allowed. The impugned order passed by the trial Court is not sustainable and hence, the same are set aside.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 08, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No