

CR No.5785 of 2023 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(127)

CR No.5785 of 2023 (O&M)
Date of Decision: 03.10.2023.

Mohd. Kamil

.....Petitioner

Versus

Ajaib Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Ms. Prarthana Duggal, Advocate for
Mr. Namit Khurana, Advocate
for the petitioner.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition assails the order dated 22.05.2023 (Annexure P-4), passed by the Court of the Civil Judge (Junior Division), Bilaspur, vide which the application filed by the petitioner under Order 1 Rule 10 CPC for impleading him as a party-defendant was dismissed.

2. A civil suit for possession by way of specific performance on the basis of agreement to sell dated 04.02.2008 was filed by respondent No.1-Ajaib Singh against respondent No.2-Inderjeet Kaur. It was averred that Inderjeet Kaur had entered into an agreement to sell dated 04.02.2008 with Ajaib Singh agreeing to sell land measuring 01 kanal 12 marlas situated in Village Chhachhrauli, Tehsil Chhachhrauli, District Yamuna Nagar at the rate of ₹700 per square yards. During the pendency of the suit, an application under Order 1 Rule 10 CPC (Annexure P-3) was filed by the present petitioner seeking to be impleaded as a party/defendant. The ground taken was that Inderjeet Kaur had executed an agreement to sell with regard to the same land with him also on 16.08.2017. The application was

however dismissed by way of impugned order dated 22.05.2023 (Annexure P-4) leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner has submitted that the impugned order dated 22.05.2023 (Annexure P-4) dismissing the application filed by the petitioner under Order 1 Rule 10 CPC, is erroneous and is not sustainable. It has been submitted that the petitioner is a necessary party since the agreement to sell dated 16.08.2017 executed by respondent No.2-Inderjeet Kaur in favour of the petitioner as well, the decision in the civil suit filed by respondent No.1-Ajaib Singh will adversely affect the rights of the petitioner.

5. I have considered the submissions made by learned counsel for the petitioner, but find the same to be devoid of merit. It was recently held by the Hon'ble Supreme Court of India in the case of ***Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others, 2020(13) SCC 773***, that unless it is a compulsion of the rule of law, a plaintiff cannot be forced to add parties against whom he does not want to fight. The Hon'ble Apex Court held as under:-

“5.2 An identical question came to be considered before this Court in the case of Kasturi (supra) and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The 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. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance

of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.”

6. Reverting to the facts of the present case, the petitioner claims that respondent No.2-Indeerjeet Kaur entered into an agreement to sell dated 16.08.2017 with him, which was also *qua* the same land. It has rightly been held by the trial Court that the remedy with the petitioner would be to file a separate suit for specific performance and then proceed in accordance with law, so that contradictory findings are not recorded. In the considered opinion of the Court, the petitioner is not a necessary party and not even a proper party and it would be for the *dominus litis* to decide as to who is to be impleaded as a party in the civil suit. No relief has been claimed against the present petitioner in the civil suit filed by respondent No.1-Ajaib Singh and, therefore, no occasion would arise to implead the petitioner as a party/defendant.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

October 03rd, 2023
Rekha

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