

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

CR No.41 of 2019 (O&M)
Reserved on: 16.12.2023
Date of decision: 21.12.2023

Maya Rani

....Petitioner

Versus

Yashpal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Mehak Sawhney, Advocate
for Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

None for the respondents.

NAMIT KUMAR J.

1. The instant revision petition has been filed under Article 227 of the Constitution of India, praying for setting-aside the order dated 22.11.2018 (Annexure P-5) passed by the learned Civil Judge (Jr. Division), Gidderbaha, whereby the application filed by the petitioner/applicant under Order 1 Rule 10 CPC has been dismissed.

2. Brief facts of the case are that the suit property i.e. a residential house measuring 4 marlas i.e. 36/3762 share out of 20 kanal-18 marla land situated within the area of Gidderbaha-I as per jamabandi for the year 2014-15, was initially owned by Harvinder Singh, son of Kartar Singh. Thereafter, the same was sold to one Sonu Sharma, son of Om Parkash vide duly registered Sale Deed dated 12.08.2005. In context of the suit property, a suit for specific performance has been filed i.e. C.S. No.617 of 2016 by one Yashpal, son of Jagga Ram against

Smt. Salochna Rani, Prem Lata, Kanav and Hitesh (LRs of Sonu Sharma) wherein it is stated that Sonu Sharma entered into an agreement to sell dated 12.05.2014 and later, he had died on 10.10.2015. The mutation of the said suit property was carried out in favour of Smt. Salochna Rani, Prem Lata, Kanav and Hitesh (LRs of Sonu Sharma) on 24.12.2015. Thereafter, a Transfer Deed was made by Smt. Salochna Rani in favour of the present petitioner namely Maya Rani (qua her share) through transfer deed dated 06.09.2016.

3. The suit for possession by way of specific performance was filed on 25.10.2016, to which a written statement was filed by respondents/defendants No. 2 to 4 – Prem Lata, Kanav and Hitesh (LRs of Sonu Sharma).

4. During the pendency of the aforementioned civil suit, an application dated 02.05.2018 under Order 1, Rule 10 CPC, was filed by the petitioner with a prayer to implead her as a party, however, the said application was dismissed by the learned trial Court vide impugned order dated 22.11.2018.

5. Counsel for the petitioner submits that the petitioner is 1/4th owner of the suit property and hence, need to be impleaded as a party in the civil suit. She further submits that the learned trial Court vide impugned order dated 22.11.2018 has wrongly rejected the application filed under Order 1 Rule 10 CPC, in view of the judgment “**Kasturi vs Iyyamperumal and Others**”, (2005) 6 SCC 733, wherein the Hon’ble Supreme Court held that *the plaintiff enjoys the status of dominus litis and in case the plaintiff did not want to join the rival claimants as defendants in a pending suit, the risk was totally of the plaintiff and he*

cannot be forced to join them as a party defendant. Further the judgment gives a special status to the plaintiff who has the right to implead certain persons as defendant on the ground that they may be adversely affected by the outcome of the suit.

6. Counsel for the petitioner further contends that defendant No.1 namely Salochna Rani (proforma respondent No.5 herein) has transferred her share through registered Transfer Deed, in favour of the present petitioner before filing of the civil suit. She also submits that the petitioner is a transferee and thus, the owner of the share in the suit property and she is none other than the maternal aunt (massi) of Sonu Sharma and, therefore, the petitioner has a right to be impleaded as a party in the civil suit filed by the plaintiff/respondent No.1.

7. Counsel for the petitioner has relied upon the judgment ***“Sumtibai and others vs Paras Finance Company Regd.”***, 2007 (10) SCC 82, wherein the Hon’ble Supreme Court has held that the aforesaid decision in ***Kasturi’s case (supra)*** is distinguishable as a third party cannot be impleaded in a suit for specific performance if he/she has no semblance of title in the property in dispute and impleading of such a party would unnecessarily protract or obstruct the proceedings in the civil suit, however, the said decision will have no application, where a third party shows some semblance of title or interest in the property in dispute. The operative part of the said judgment i.e. ***Sumtibai’s case (supra)***, reads as under:-

“...9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi v. Iyyamperumal [(2005) 6 SCC 733]. He has submitted that in this case it has been held that in a suit for specific performance of a contract for

sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12-8-1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

14. In view of the aforesaid decisions we are of the opinion that Kasturi case [2005) 6 SCC 733] is clearly distinguishable. In our opinion, it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."

8. Counsel for the petitioner also relied upon the judgment ***“Mumbai International Airport Private Limited vs Regency Convention Centre & Hotels Private Limited and other”***, 2010 (7) SCC 417, to submit that *if a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit, though he need not be a person in favour*

of or against whom the decree is to be made.

9. Despite being served, nobody appeared on behalf of the respondents.
10. I have heard the counsel for the petitioner and perused the record.
11. In the present case, the defendant No.1/Salochna Rani (proforma respondent No.5 herein) has transferred her share through registered Transfer Deed, in favour of the present petitioner before filing of the civil suit and the petitioner being the tranferee became the owner of the share in the suit property and thus, the petitioner has shown her semblance of title in the property in dispute. Every party in a case has a right to be heard.
12. Thus, keeping in view the law laid down by the Hon’ble Supreme Court in *Sumtibai’s case (supra)* and *Mumbai International Airport’s case (supra)*, the present revision petition is allowed and the order dated 22.11.2018 passed by the learned trial Court is set-aside and the petitioner is ordered to be impleaded as a party in the civil suit i.e. CS No.352 of 2016.
13. Disposed of accordingly.
14. However, nothing expressed hereinbefore shall be construed as an expression of opinion on merits of the case.

(NAMIT KUMAR)
JUDGE

21.12.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No