

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.112

CR-5343-2018

Date of Decision: 30.04.2024

BALISHWAR SINGH DHALIWAL

....Petitioner

Versus

BALBIR SINGH THROUGH LRS AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. G.P.Vashisht, Advocate,
for the petitioner.

Mr. Ankush Singla, Advocate,
for respondent No.1 (i to iv).

Mr. Rohit Joshi, Advocate,
for respondents No.2 (i), 3, 4 (i & ii), 5 & 6.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 21.07.2018 (Annexure P-11) passed by learned Appellate Court, whereby an application filed by the petitioner under Order 1 Rule 10 CPC, for being impleaded as respondent in the appeal filed at the instance of Kartar Singh (who is respondent No.2 in the present revision petition), was dismissed.

Notice of the revision petition was given and respondent No.1 (i to iv), as well as respondents No. 2 (i), 3, 4 (i & ii), 5 & 6, are making appearance through their respective counsel.

Learned counsel for the parties heard.

The material facts, as culled out from the paperbook are that, initially, the present respondents No.2 to 6 had entered into an agreement to sell dated 03.04.2006, with Balbir Singh, who is respondent No.1 in the present revision petition, for sale of the land measuring 104 kanals, for a total sale consideration of Rs.26,00,000/-. An amount of Rs.2,00,000/- was paid as earnest money and the sale deed was to be executed on 15.06.2007. However, after two days of execution of the agreement to sell, there was defiance of the terms of the agreement, at the instance of vendors, who are respondents No.2 to 6 in the present revision petition, as a result whereof, the vendee-Balbir Singh, had filed a suit for permanent injunction on 05.04.2006. However, in the said suit, vendors/respondents No.2 to 6 had made appearance and had admitted about execution of an agreement to sell and had also given an undertaking before the Court that they shall not be selling the land, which forms the basis of the agreement to sell. As a result of the said undertaking, the suit was withdrawn, at the instance of Balbir Singh.

However, on the target date i.e. 15.06.2007, the vendors did not turn up for execution of the sale deed, as a result whereof, Balbir Singh, had filed a suit for seeking specific performance of agreement to sell dated 03.04.2006. The said suit was filed in the month of July, 2007 and it was decreed on 07.05.2014. Appeal was filed by the vendors/respondents No.2 to 6 in the year 2014 only.

During the pendency of the appeal, Balishwar Singh Dhaliwal, who is the present petitioner, had filed an application under Order 1 Rule 10 CPC, thereby asserting his right over the suit property, on the basis of an agreement to sell dated 19.04.1994, copy whereof is Annexure P-1.

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However, the said application was dismissed vide the impugned order dated 21.07.2018, copy whereof is Annexure P-11.

Feeling aggrieved by the aforesaid order, the present revision petition has been filed by the petitioner-Balishwar Singh Dhaliwal.

Also, from the material coming forth in the present revision petition, it is evident that Balishwar Singh Dhaliwal, the present petitioner had also filed a suit for seeking specific performance of the agreement to sell dated 19.04.1994, copy whereof is Annexure P-1, on 05.09.2010. The said suit was decreed on 13.09.2016. Thereafter, the vendors/respondents No.2 to 6 had executed the sale deed in favour of the petitioner-Balishwar Singh Dhaliwal, on 24.01.2018, regarding the subject property. This fact, as such, is also not disputed by learned counsel for the petitioner, as well as learned counsel for respondents No.2 to 6.

Keeping in view the aforesaid fact situation, it is submitted by learned counsel for respondent No.1/legal representatives of Balbir Singh, that there is collusion between the petitioner, as well as respondents No.2 to 6, as a result whereof, the petitioner had filed a suit on 05.09.2010, thereby asserting the right, on the basis of an agreement to sell dated 19.04.1994. The said agreement, undisputedly, is an unregistered document, even though, it contains the clause of handing over the possession of the suit property.

On query by the Court, it is submitted by learned counsel for respondent No.1 that, during the pendency of the suit filed at the instance of the petitioner, respondent No.1 had filed an application under Order 1 Rule 10 CPC, for being impleaded as respondent, in the suit, as his interest was jeopardized by way of subsequent suit, filed at the instance of the petitioner.

However, the said application was dismissed. Even, the revision filed was dismissed. The suit filed by respondent No.1 is initial in time and the present application under Order 1 Rule 10 CPC, for being impleaded as party, was filed on 29.08.2014, during the pendency of the appeal, which was also filed in the year 2014. On the said date, the appeal was fixed for final arguments and only on account of interim stay granted by this Court in the revision petition, the said appeal is still pending.

Such being the factual position, it is evident that Balishwar Singh Dhaliwal, the present petitioner, remained silent throughout. Even, in the suit for permanent injunction, filed at the instance of respondent No.1, there was no disclosure made, at the instance of the vendors/respondents No.2 to 6, with regard to any agreement dated 19.04.1994. However, it was only in the written statement filed in the suit for specific performance, filed at the instance of respondent No.1 that vendors/respondents No.2 to 6 had disclosed about the agreement dated 19.04.1994. Thereafter, there was again silence with regard to the same. It was subsequently in the suit filed at the instance of the present petitioner that respondent No.1 had filed an application for becoming party to the suit and the said application was dismissed and even, the revision petition was dismissed.

Such being the state of affairs, the petitioner, at that time, was in know of his rights being jeopardized, on the basis of the right asserted, on the basis of agreement to sell dated 03.04.2006, at the instance of respondent No.1. Then also, there was long silence, on the part of the petitioner and he did not initiate any immediate action, when a cloud was created on his right. The suit filed by respondent No.1 was decreed and an appeal was filed at the instance of the vendors. However, collusion is evident on the part of

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vendors/respondents No.2 to 6 and the present petitioner. It was only at a later stage, when the arguments were to be addressed in the appeal, the application in hand was filed.

In the meanwhile, without making any disclosure, or making respondent No.1 or his legal representatives as party to any proceedings, the sale deed dated 24.01.2018, as such, was executed by vendors/respondents No.2 to 6 in favour of the petitioner, without bringing the aforesaid fact to the notice of respondent No.1. The fact of execution of sale deed aforesaid, is not disputed, either by learned counsel for the petitioner, or by learned counsel for the vendors/respondents No.2 to 6.

In the given circumstances, when collusion is evident between the petitioner and respondents No.2 to 6, the malafide intention to file application under Order 1 Rule 10 CPC, is writ large, on the part of the petitioner. As such, learned Appellate Court has appropriately dismissed the application. The impugned order warrants no interference by way of exercise of revisional jurisdiction. Hence, the revision petition sans merit and the same is hereby dismissed.

30.04.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No