



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

116

CR-518-2023(O&M)
Reserved on: 11.02.2025
Pronounced on :01.03.2025

Parkash Kaur

...Petitioner

V/s

Gurwant Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. P.S. Kanwar, Advocate, for the petitioner.

Mr. Vikas Gupta, Advocate, for respondents No.2 and 3.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 30.08.2022 (Annexure P-3) passed by the Court of learned Civil Judge (Jr. Divn.), Patti, vide which the application filed by respondents No.2 and 3 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short the "CPC") for being impleaded as defendants in the suit, was allowed.

2. The facts, as emanating from the revision petition, are that a suit for declaration by way of specific performance of an agreement to sell dated 13.02.2017 with regard to land measuring 68 kanals 14 marlas (fully described in the suit) situated within the revenue estate of Village Kot Data, Tehsil Patti, District Tarn Taran (hereinafter referred to as the "disputed land") was filed by the petitioner-plaintiff against respondent No.1 (Gurwant Singh). The total sale consideration is stated to have been fixed at Rs.95 lakhs out of which, a sum of Rs.65 lakhs was paid on different dates starting from the date of execution of the agreement to sell till 20.09.2020. The balance amount was Rs.30 lakhs, which was to be paid on the date of execution of the sale deed,

which was initially fixed as 13.02.2019 but was extended from time to time and was finally fixed as 08.11.2021.

3. During the pendency of the said suit, respondents No.2 and 3 moved an application under Order 1 Rule 10 CPC (Annexure P-1) for being impleaded as defendants. The case set up by them was that they had purchased half share out of the land measuring 79 kanals 14 marlas from Bakhshish Kaur and Surinder Kaur, who had become owners of land measuring 79 kanals 14 marlas after a litigation with Gurwant Singh. The suit filed by Bakhshish Kaur was decreed on 05.04.2017 and the appeal preferred by Gurwant Singh was dismissed on 29.11.2019, after which sale deed dated 13.09.2021 was executed in their favour. Their case was that the present suit was the result of collusion between the petitioner (Parkash Kaur) and respondent No.1 (Gurwant Singh).

4. The application was opposed by way of reply (Annexure P-2), wherein the stand taken was that the application was collusive between the applicants and Gurwant Singh. A stand was taken that in the suit referred to in the application, Gurwant Singh had not appeared and also that an FIR under Section 420/120-B IPC had been registered against Bakhshish Kaur and Gurwant Singh. It was also stated that the judgment and decree dated 29.11.2019 passed in first appeal was under challenge in RSA-1369-2020. It was averred that the sale deed dated 13.09.2021 executed in favour of the applicants was not binding upon the petitioner (Parkash Kaur). The application was allowed by way of the impugned order leading to filing of the present revision petition.

5. I have heard learned counsel for the parties.

6. It was submitted by learned counsel for the petitioner that the impugned order is not sustainable, for, the settled law is that it is the plaintiff who is the *dominus litis* and, therefore, he cannot be forced to add a party

against whom he does not wish to litigate. Learned counsel submitted that especially in suits for specific performance of contracts, a subsequent purchaser would neither be a necessary party nor a proper party and, being a stranger to the contract, was not required to be added as a party. It was also submitted that the litigation referred to was, in fact, collusive litigation, which had been initiated with a view to defeat the rights of the petitioner. Learned counsel submitted that under the circumstances, the application for impleadment had erroneously been allowed by the trial Court and that the impugned order deserves to be set aside. In support of his contentions, learned counsel placed reliance upon judgments of the Supreme Court of India in the cases of ***Kasturi vs. Iyyamperumal & others, 2005(2) RCR (Civil) 691*** and ***Gurmeet Singh Bhatia vs. Kiran Kant Robinson and others, 2019(3) RCR (Civil) 809.***

7. *Per contra*, learned counsel representing respondents No.2 and 3 submitted that the issue as to whether an application for impleadment should be allowed or not, would be decided as per the facts of each case and that in the present case, the application was rightly allowed, for, the present suit was filed to defeat the rights of the applicants (respondents No.2 and 3 herein). He submitted that recently, the Supreme Court of India has taken a view that the law of impleadment of subsequent transferees has evolved in a manner that liberally enables subsequent transferees to protect their interest and that the doctrine of *lis pendens* does not render all transfers *pendent lite* to be *void ab initio* and that it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder. It was submitted that under the circumstances, the application was rightly allowed and no interference is, therefore, called for in the impugned order. In support of his contentions, learned counsel placed reliance upon the judgments of the Supreme Court of

India in the cases of *Yogesh Goyanka vs. Govind and others*, (2024)7 SCC 524, *B. Fathima Beevi and another vs. Sornammal @ Sornam (Dead) through LRs and others*, (Civil Appeal Nos.10192-10195 of 2018 @ SLP(Civil) No.31814-31817 of 2015, decided on 03.10.2018) Law Finder Doc Id # 1357750, *Sumitbai and others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) and others*, (2007) 10 SCC 82.

8. I have considered the submissions made by learned counsel for the parties.

9. As regards the present suit, the agreement to sell is stated to have been executed on 13.02.2017 and the initial target date was fixed as 13.02.2019. The total land was 68 kanals 14 marlas. The total sale consideration was Rs.95 lakhs out of which, Rs.65 lakhs are stated to have already been paid and the target date was extended finally upto 08.11.2021.

10. In so far as respondents No.2 and 3 are concerned, they rely upon litigation initiated by Bakhshish Kaur in favour of Gurwant Singh and others qua land measuring 79 kanals 14 marlas (including the disputed land). The said suit is stated to have been decreed on 05.04.2017 and the appeal was dismissed on 29.11.2019. RSA-1369-2020 is stated to be pending. Respondents No.2 and 3 had purchased half share out of land measuring 79 *kanals 14 marlas* vide registered sale deed dated 13.09.2021. Both the parties state that the suit by the other is collusive. An FIR also stands registered against respondents No.2 and 3 at the instance of the present petitioner. Now, it is for the Civil Court to decide which case is genuine and which is not. In any case, on the face of it, the presence of defendants (respondents No.2 and 3) appears to be essential for the decision of the present case as well because, if the present suit is collusive, the factum of the other litigation will never come on record. However, if the other litigation is collusive, it will be brought on record by the petitioner in the present case but in the absence of

respondents No.2 and 3. Under the circumstances, the trial Court, in the considered opinion of this Court, did the right thing by allowing the application filed by respondents No.2 and 3 under Order 1 Rule 10 CPC.

11. No doubt, the basic law is that a stranger or a third party to the contract is not entitled to be added as a party and in various judgments including the judgment in the case of **Kasturi** (supra), the Supreme Court of India laid down two tests viz. i) There must be a right of relief against such party and ii) No effective decree can be passed in the absence of such party. It was also held that persons stranger to the contract are neither necessary nor proper parties. Paras 6 and 10 read as under:-

“6. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the Civil Procedure Code would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor, In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. 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.

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10. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is

necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in Tasker v. Small, 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties, and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties, and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it." [Emphasis supplied]"

12. The said view was reiterated in a number of judgments including the judgment of Gurmit Singh Bhatia (supra). However, recently, in the case of *Yogesh Goyanka vs. Govind and others*, (2024) 7 SCC 524, the Supreme

Court of India also took a view that in each case, a discretionary exercise has to be undertaken to ascertain as to whether such an application is to be filed or not. A similar view was taken in the judgment of **Sumtibai and others** (supra). It was held that a third party can be impleaded in the suit where such third party shows some semblance of title or interest in property. In this case, the judgment of the Supreme Court of India in the case of **Kasturi** (supra) was also considered and it was held that the decision of the Supreme Court in **Kasturi's** case (supra) could only be understood to mean that a third party cannot be impleaded in a suit for specific performance if it has no semblance of title in the property in dispute. It was held that a busybody or an interloper with no semblance of title could not, of course, be impleaded in such a suit and impleading such a party would unnecessarily protract or obstruct the proceedings. It was held that the decision in **Kasturi's** case would have no application, where a third party shows some semblance of title or interest in the property in dispute. The Hon'ble Supreme Court of India, in fact distinguished **Kasturi's** case;

“14. In view of the aforesaid decisions we are of the opinion that Kasturi's case (supra) 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.”

13. Reverting to the facts of the present case, respondents No.2 and 3 were not mere subsequent purchasers during the pendency of the suit but had

remained successful in a litigation with Gurwant Singh, after which the sale deed was executed. It cannot, therefore, be said that their presence would not be necessary for the decision of the present suit. The impugned order does not, therefore, suffer from any illegality and in the considered opinion of this Court, the application filed by respondents No.2 and 3 under Order 1 Rule 10 CPC was rightly allowed.

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

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 11.02.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No