(1989) 05 P&H CK 0031

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 452 of 1988

Singh Ram Singh	APPELLANT
Vs	
Gig Raj	RESPONDENT

Date of Decision: May 23, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Citation: (1989) 05 P&H CK 0031

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

J.V. Gupta, J.
This revision petition is directed against the order of the trial court, dated January 20, 1988, whereby the application under Order 1 Rule 10, Code of Civil Procedure, filed on behalf of Sat Narain and Bajrang, respondents Nos. 2 and 3, brothers of defendant Gig Raj, was allowed in the suit for specific performance filed by the plaintiff Singh Ram Singh.

2. The Learned Counsel for the plaintiff submitted that in the suit for specific performance on the basis of an agreement of sale, the said respondents were not necessary or proper parties at all and the view taken by the trial court was wholly wrong and illegal and that it had acted illegally and with material irregularity in the exercise of its jurisdiction. In support of this contention, the Learned Counsel relied upon a Division Bench judgment of this Court in Krishan Lal and Others Vs. Tek Chand and Others, On the other hand, the Learned Counsel for the defendants submitted that after the impugned order was passed, the proceedings having been going on and the plaintiff has been accepting the costs as well and, therefore, in this view of the conduct of the plaintiff, he was debarred from

challenging the impugned order.

3. After hearing the Learned Counsel for the parties, I find merit in this revision petition.

4. At the time of the motion hearing on February 11, 1988, only the passing of the final order was stayed and not the proceedings. That being so, it could not be successfully argued that the conduct of the plaintiff was such that he was debarred from challenging the impugned order. On merits, in view of the above said Division Bench judgment of this Court in Kishan Lal''s case (supra), it could not be successfully argued that respondents Nos. 2 and 3 were necessary parties to be impleaded to the suit. It was held therein that in a suit for specific performance of a contract of sale, a person not a party to the argument of sale and claiming to be a joint owner of the subject matter of the suit is entitled to be impleaded as a defendant. He is neither a necessary party, nor a proper party.

5. Consequently, this revision petition succeeds and is allowed, with costs. Since the suit was filed in the year 1984, if the parties yet to lead evidence, it is directed that they will lead the same at their own responsibility and for that purpose only one opportunity will be given to each party.