

(2012) 08 P&H CK 0265

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5797 of 2011

Mandip Singh and another

APPELLANT

Vs

Shhindo and others

RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: B.S. Saini, for Mr. Premjit Kalia, for the Appellant; Ranjit Sharma, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Challenge in this revision petition filed under Article 227 of the Constitution of India by the plaintiffs is to order dated 04.05.2011 (Annexure P-1) passed by learned Civil Judge (Senior Division), Tarn Taran thereby allowing application moved by respondents No. 1 and 2 herein under Order 1 Rule 10 of CPC for being impleaded as party to the suit which has been instituted by petitioners/plaintiffs against Sarabjit Singh defendant (since deceased and represented by respondents No. 3 to 6 herein as his legal representatives), inter alia, for specific performance of the agreement to sell allegedly executed by defendant in favour of the plaintiffs. Respondents No. 1 and 2 herein in their application alleged that they are co-sharers in the suit land and, therefore, they are proper and necessary party to the suit. Plaintiffs resisted the said application. Trial Court has allowed the application vide impugned order (Annexure P-1) and has ordered impleadment of respondents No. 1 and 2 herein as defendants in the suit. Feeling aggrieved, plaintiffs have filed this revision petition.

2. I have heard counsel for the parties and perused the case file.

3. Counsel for the petitioners contended that respondents No. 1 and 2 being strangers to the agreement, on the basis whereof suit has been filed, are neither proper nor necessary party to the suit.

4. On the other hand, counsel for respondents No. 1 and 2 contended that since respondents No. 1 and 2 claim share in the suit land, they are proper and necessary party to the suit.

5. I have carefully considered the rival contentions. Respondents No. 1 and 2 being strangers to the agreement, for specific performance whereof instant suit has been filed, cannot be said to be necessary or proper party of the suit. It may be mentioned that the decree that may be passed in the suit, without impleading respondents No. 1 and 2 as party, would not be binding on them because they are not party to the instant suit. Consequently, rights of respondents No. 1 and 2 would not be adversely effected if they are not impleaded as party to the suit. Plaintiffs do not want to implead respondents No. 1 and 2 as party. Consequently, plaintiffs cannot be forced to do so when respondents No. 1 and 2 cannot be said to be proper or necessary party to the suit, being strangers to the agreement to sell on the basis whereof suit has been filed. For the reasons aforesaid, I find that impugned order of the trial court suffers from illegality and jurisdictional error because respondents No. 1 and 2 have been ordered to be impleaded as party to the suit without being necessary and proper party and against the wishes of the plaintiffs. Accordingly, the instant revision petition is allowed. Impugned order (Annexure P-1) passed by the trial court is set aside. Application moved by respondents No. 1 and 2 herein for being impleaded as party to the suit stands dismissed.