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(2007) 2 CivCC 689 : (2007) 5 RCR(Civil) 371

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3235 of 2006

Anil Kakria	APPELLANT
Vs	
Surjit Singh Nalwa and Others	RESPONDENT

Date of Decision: March 2, 2007

Acts Referred:
Constitution of India, 1950 â€" Article 227#Specific Relief Act, 1963 â€" Section 19

Citation: (2007) 2 CivCC 689 : (2007) 5 RCR(Civil) 371

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant; Arun Jain and Mr. R.V.S. Chugh, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.
The challenge in the present revision petition is to the order passed by the learned trial Court on 22.05.2006 whereby

respondents No.3 to 6 were impleaded as defendants in the present suit for specific performance arising out of an agreement of sale dated

29.04.2005.

2. It is the case of the respondents No.3 to 6 that a separate suit for specific performance has been filed by the said respondents on the basis of an

agreement of sale dated 22.08.2005. Respondents no.3 to 6 filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908

(hereinafter to be referred as ""the Code"") on the ground that the suit has been filed in collusion with the defendants and that too on the basis of

forged documents. It is alleged that no sale agreement between the parties as is being alleged and the one being put up has been fabricated by them

by colluding with each other.

3. It has further been pointed out that actually defendant Surjit Singh Nalwa agreed to sell the house in question to the applicants on the basis of an

agreement dated 22.08.2005 at a price of Rs.3 crores. A sum of Rs.25,00,000/- was paid to him by bank draft and another sum of

Rs.25,00,000/- on the basis of receipt in cash. It is also pointed out that later on another sum of Rs.20,00,000/- was paid on cash. On receipt of

Rs.50 lacs, Shri Surjit Singh Nalwa applied for No Objection Certificate to the Estate Officer, Union Territory, Chandigarh, by attaching all the

papers. The Estate Officer granted No Objection Certificate on 30.09.2005. It is further pointed out that the present suit had been filed on the

basis of an agreement executed by one Rupinder Pal Singh, Special Attorney of the owner of the house. The Special Attorney is not on a stamp

paper. In view of the averments, the applicants sought to be impleaded in the suit as the agreement allegedly put up by the plaintiff-petitioner is to

affect their interest and rights in the suit filed by them. The learned trial Court has passed a detailed order impleading respondents No.3 to 6 as

defendants.

4. Learned counsel for the petitioner has vehemently argued that the judgments referred to by learned trial Court are not applicable to the facts of

the present case and, in fact, the applicants are strangers to the agreement dated 29.4.2005 and, therefore, cannot be impleaded in the suit for

specific performance filed by the plaintiff. Reliance is placed upon a Division Bench decision of this Court in case reported as Krishan Lal and

Others Vs. Tek Chand and Others, and decision of Hon''ble Supreme Court in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, and

Kasturi Vs. Iyyamperumal and Others,

5. A perusal of the judgment of Division Bench of this Court in Krishan Lal''s case (supra) shows that a co-owner has sought to be impleaded in

the suit as defendant. It was found that a joint owner is not a necessary party as the decree bind only the executant of the agreement. In the present

case, the agreement, basis of the suit, is alleged to be forged and fabricated document and, in fact, that the defendants have colluded with the

plaintiff. Therefore, any judgment and decree in the present suit is likely to affect the interest of the applicants. It is a case where the vendor is

alleged to have entered upon another agreement. Since the rights of the parties flow from one and same person, therefore, the presence of the

applicants would, in fact, facilitate the decision of all the questions between the parties.

6. In Kasturi"s case (supra), Hon"ble Supreme Court has laid down the tests for impleading a part, in terms of Order 1 Rule 10 of the code. Such

tests are that (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. Hon"ble Supreme Court has further held that in a suit for specific performance of the contract

for sale, the persons who are not claiming under the vendor but they are claiming adverse to the title of the vendor do not fall in any of the

categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. In the present case, the applicants have sought to implead

as defendants drawing title under the vendor and, in fact, alleged that the vendor has colluded with the plaintiff. Therefore, the said judgment, in

fact, supports the view that the applicants are necessary parties in the present suit for specific performance.

7. In Anil Kumar Singh"s (supra), it has been held that a person who acquired interest subsequent to the agreement by virtue of a decree of the

Court is not necessary party as it is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation

to the claim made in the suit. It has been held that the condition precedent to implead a person as party is that it would be necessary in order to

enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The allegations made by the

applicants are in respect of forged and fabricated agreement relied upon by the petitioner in collusion with the vender. If such assertions are

correct, the interest of the applicants is likely to be affected and, therefore, they are necessary and proper party in the suit for specific performance.

8. In view of the above, I do not find any patent illegality or material irregularity in the impugned order which may warrant interference by this

Court in exercise of its revisional jurisdiction under Article 227 of the Constitution of India.

Dismissed.