

(2013) 08 P&H CK 0771

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5018 of 2013 (O and M)

Shanti Devi and Another

APPELLANT

Vs

Anil Kumar and Another

RESPONDENT

Date of Decision: Aug. 21, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227
- Hindu Adoptions and Maintenance Act, 1956 - Section 18, 20

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

Bench: Single Bench

Advocate: Iqbal Singh Ratta, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 17500-CII of 2013:

1. Allowed as prayed for.

Main Case:

Shanti Devi and her daughter Gayatri Devi have filed this revision petition under Article 227 of the Constitution of India, impugning order dated 26.07.2013 (Annexure P-8) passed by the trial court, thereby dismissing application (Annexure P-5) filed by the petitioners under Order 1 Rule 10 of the CPC (in short-CPC) for impleading them as party to the suit, which has been instituted by respondent no. 1-plaintiff Anil Kumar against respondent no. 2-defendant Bhagwan Dass for possession of the suit land by specific performance of the agreement to sell dated 04.12.2008.

2. Petitioners are wife and daughter respectively of respondent no. 2 - defendant. Plaintiff is brother's son of the defendant.

3. Case of the petitioners is that they had filed maintenance suit under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act along with suit for injunction and other reliefs against respondent no. 2 Bhagwan Dass as defendant. Parties to that suit effected compromise dated 28.02.2011 (Annexure P-1), and accordingly, the said suit was dismissed as withdrawn vide order dated 28.02.2011 (Annexure P-2) with stipulation that the parties shall be bound by compromise. According to the compromise, defendant agreed not to alienate the land mentioned in that suit in any manner, without the consent of his sons and daughters. Petitioners alleged that in view of right of the petitioners for maintenance and defendant having agreed not to alienate the land, petitioners are necessary party to the suit.

4. Plaintiff, by filing reply (Annexure P-6), opposed the application and denied the averments made therein. Defendant, by filing reply (Annexure P-7), broadly admitted the claim of the petitioners.

5. Learned trial court, vide impugned order Annexure P-8, has dismissed the application Annexure P-5 filed by the petitioners, who have, therefore, filed this revision petition to assail the said order.

6. I have heard counsel for the petitioners and perused the case file.

7. Counsel for the petitioners contended that the petitioners are necessary and proper party to the suit in view of their right of maintenance against the defendant.

8. I have carefully considered the aforesaid contention, which cannot be accepted.

9. Counsel for the petitioners stated that the petitioners had filed the maintenance suit on 08.12.2008. It is thus apparent that the said suit was filed after the defendant had allegedly executed agreement dated 04.12.2008 in favour of the plaintiff. By effecting compromise (Annexure P-1) on 28.02.2011 in the said maintenance suit, the petitioners and defendant colluded to deprive the plaintiff of the fruits of the impugned agreement. Consequently, in these circumstances, the petitioners cannot be said to be necessary or proper party to the suit. On the other hand, collusion of petitioners with the defendant is also apparent from the fact that the petitioners filed application (Annexure P-5), when the suit was at the stage of rebuttal evidence and arguments, although the suit was filed in May 2011 i.e. after petitioners had effected compromise (Annexure P-1) with the defendant. Application Annexure P-5 is dated 18.03.2013. It is thus apparent that application was moved at highly belated stage with mala fide intention and oblique motive. For the reasons aforesaid, I find that the application filed by the petitioners has been rightly dismissed by the trial court. Petitioners cannot be said to be proper or necessary party to the suit, which has been instituted for specific performance of the agreement, allegedly executed by the defendant in favour of respondent no. 1. There is, therefore, no perversity,

illegality or jurisdictional error in impugned order of the trial court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition lacks any merit and is accordingly dismissed in limine.